



CRIMINAL LAW

BAR QUESTIONS & ANSWERS

(2007-2017)

with Table of Frequently
Asked Topics in the Bar

UP LAW BAR COMMITTEE

Dean Fides C. Cordero-Tan
Associate Dean Concepcion L. Jardeleza
Atty. Ramon S. Esguerra
Atty. Eduardo A. Labitag
Atty. Glenda T. Litong
Atty. Victoria V. Loanzon

SUBJECT EXPERTS

Atty. Arnold F. De Vera
Atty. Ramon S. Esguerra
Atty. Victoria V. Loanzon
Atty. Denise Monina F. Uy
Atty. Raul T. Vasquez
Atty. Virginia V. Viray

UP LAW CENTER TRAINING AND CONVENTION DIVISION

Atty. Glenda T. Litong
Atty. Renee A. Fopalan
Renee Louise M. Co
Erickson C. Mariñas
Vincent Ivan A. Paredes
David Joseph I. Pascua
Rebecca Gloria C. Tan
Samantha Isabelle Vitriolo
Francesca Mikhaela P. Yazon

LAYOUT

Louielyn M. Dela Cruz
Nicolas Japheth D. Mabini
Ma. Ella Natividad N. Cabais
Bernice Joy G. Pascual

IN PARTNERSHIP WITH THE UP LAW BAR OPERATIONS COMMISSION



BAR QUESTIONS & ANSWERS (2007-2017)

Copyright and all other relevant rights over this material are owned by the University of the Philippines College of Law Training and Convention Division.

The ownership of work belongs to the University of the Philippines College of Law Training and Convention Division. No part of this book shall be reproduced or distributed without the consent of the University of the Philippines College of Law Training and Convention Division.

All rights reserved.

TABLE OF CONTENTS

I. REVISED PENAL CODE – BOOK I	1
A. General Principles	1
1. <i>Mala in se</i> vs. <i>mala prohibita</i>	2
2. Applicability and effectivity of the RPC	3
3. <i>Pro reo</i> principle.....	6
B. Felonies	7
1. Criminal liabilities and felonies.....	7
2. Circumstances affecting criminal liability	16
3. Persons liable and degree of participation.....	26
C. Penalties	32
1. Penalties that may be imposed and retroactive effect of penal laws.....	32
2. Classification.....	33
3. Duration and effects	33
4. Application	34
5. Graduation of penalties	38
6. Accessory penalties.....	38
7. Execution and service.....	38
D. Extinction of criminal liability.....	44
E. Civil liability in criminal cases.....	46
II. REVISED PENAL CODE – BOOK II.....	49
A. Crimes against National Security and Laws of Nations.....	49
B. Crimes against the Fundamental Law of the State	50
C. Crimes against Public Order.....	52
D. Crimes against Public Interest.....	60
E. Crimes against Public Morals	60
F. Crimes committed by Public Officers	61
G. Crimes against Persons.....	67
H. Crimes against Personal Liberty and Security.....	80
I. Crimes against Property	84
J. Crimes against Chastity	101
K. Crimes against the Civil Status of Persons.....	103
L. Crimes against Honor.....	104
M. Quasi-offenses (or Criminal Negligence)	107
III. SPECIAL LAWS.....	109
A. Anti-Arson Law (Secs. 1 to 5, PD 1613, as amended by PD 1744)	109
B. Anti-Child Pornography Act of 2009 (Secs. 3[a-c], 4, and 5, RA 9775).....	109
C. Anti-Fencing Law of 1979 (Secs. 2 and 5, PD 1612)	109
D. Anti-Graft and Corrupt Practices Act (Sec. 3, RA 3019, as amended)	111
E. Anti-Hazing Act of 2018 (Secs. 2 and 3, RA 8049, as amended by RA 11053)	112
F. Anti-Hijacking Law (Secs. 1 and 3, RA 6235)	112
G. Anti-Photo and Video Voyeurism Act of 2009 (Secs. 3 [a, b, d, f] and 4, RA 9995)	113
H. Anti-Plunder Act (Secs. 1 and 2, RA 7080, as amended by RA 7659)	113
I. Anti-Sexual Harassment Act of 1995 (Sec. 3, RA 7877).....	116
J. Anti-Torture Act of 2009 (Secs. 3 [a, b], 4, and 5, RA 9745).....	116
K. Anti-Trafficking in Persons Act of 2003 (Secs. 3, 4, and 6, RA 9208, as amended).....	116
L. Anti-Violence Against Women and their Children Act of 2004 (Secs. 3, 5, and 26, RA 9262).....	117
M. Bouncing Checks Law (Sec. 1, BP 22).....	119
N. Comprehensive Dangerous Drugs Act of 2002 (Secs. 5, 11, 15, and 21, RA 9165, as amended by RA 10640).....	120
O. Comprehensive Firearms and Ammunition Regulation Act (Secs. 28 and 29, RA 10591)	125
P. Cybercrime Prevention Act of 2012 (Secs. 4 to 6, RA 10175)	125

Q. Human Security Act of 2007 (Secs. 3 to 6, RA 9372)	125
R. New Anti-Carnapping Act of 2016 (Secs. 3 to 4, RA 10883)	125
S. Obstruction of Justice Law (Sec. 1, PD 1829).....	126
T. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act (Secs. 3[a], 5, and 10, RA 7610).....	127
FREQUENTLY ASKED TOPICS (2007-2017)	128

I. REVISED PENAL CODE – BOOK I

A. General Principles

1. What are the constitutional provisions limiting the power of Congress to enact penal laws? (2012 Bar Question)

SUGGESTED ANSWER:

Under the Constitution, the provision limiting the power of Congress to enact penal laws, are as follows:

1. The law must not be an ex post facto law or it should not be given a retroactive effect;
 2. The law must not be a bill of attainder, meaning it cannot provide punishment without judicial proceedings;
 3. The law must not impose cruel, unusual or degrading punishment; and
 4. No person shall be held to answer for a criminal offense without due process of law.
2. The maxim "*Nullum crimen nula poena sine lege*" means that: (2011 Bar Question)
 - A) the act is criminal at the time of its commission and recognized as such at the time of its commission but the penalty therefor is prescribed in a subsequently enacted law.
 - B) the act is criminal and punished under and pursuant to common law.
 - C) there is a crime for as long as the act is inherently evil.
 - D) crime is a product of the law.

SUGGESTED ANSWER: D.

3. A crime resulting from negligence, reckless imprudence, lack of foresight or lack of skill is called: (2011 Bar Question)
 - A) dolo.
 - B) culpa.
 - C) tortious crimes.
 - D) quasi delict.

SUGGESTED ANSWER: B.

4. It is a matter of judicial knowledge that certain individuals will kill others or commit serious offenses for no reason at all. For this reason: (2011 Bar Question)
 - A) lack of motive can result in conviction where the crime and the accused's part in it are shown.
 - B) motive is material only where there is no evidence of criminal intent.
 - C) lack of motive precludes conviction.
 - D) the motive of an offender is absolutely immaterial.

SUGGESTED ANSWER: A.

5. Motive is generally IMMATERIAL in determining criminal liability EXCEPT when: (2011 Bar Question)
 - A) several offenders committed the crime but the court wants to ascertain which of them acted as leader.
 - B) the evidence of the crime consists of both direct and circumstantial evidence.
 - C) ascertaining the degree of penalty that may be imposed on the offender.
 - D) the evidence of guilt of the accused is circumstantial.

SUGGESTED ANSWER: D.

1. *Mala in se* vs. *mala prohibita*

6. Tonito, an 8-year-old boy, was watching a free concert at the Luneta Park with his father Tony. The child stood on a chair to be able to see the performers on the stage. Juanito, a 10-year-old boy, who was also watching the concert, could not see much of the performance on the stage because Tonito was blocking his line of sight by standing on the chair. Using his elbow, Juanito strongly shoved Tonito to get a good view of the stage. The shove caused Tonito to fall to the ground. Seeing this, Tony struck Juanito on the head with his hand and caused the boy to fall and to hit his head on a chair. Tony also wanted to strangle Juanito but the latter's aunt prevented him from doing so. Juanito sustained a lacerated wound on the head that required medical attendance for 10 days.

Tony was charged with *child abuse* in violation of Sec. 10(a), in relation to Sec. 3(b)(2), of R.A. 7610 (*Child Abuse Law*) for allegedly doing an “act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.” In his defense, Tony contended that he had no intention to maltreat Juanito, much less to degrade his intrinsic worth and dignity as a human being. (2017 Bar Question)

- A) Distinguish crimes *mala in se* from crimes *mala prohibita*.
 B) Was Tony criminally liable for *child abuse* under R.A. 7610? Explain your answer.

SUGGESTED ANSWER:

- A) *Mala in se* and *mala prohibita* are distinguished as follows: (1) *Mala in se* are inherently wrong or immoral, while *mala prohibita* are only wrong because they are prohibited by law; (2) In *mala in se*, good faith or lack of criminal intent is a defense, while in *mala prohibita*, it is not; (3) Modifying circumstances can be appreciated in *mala in se*, while in *mala prohibita* it cannot be appreciated unless the special law adopts the technical nomenclature of the penalties of the Revised Penal Code; (4) *Mala in se* are punishable under the Revised Penal Code; or special laws where the acts punishable therein are wrong by nature. *Mala prohibita* are punishable under special laws
- B) No, Tony is not criminally liable since he neither laid hands on Juanito with the intent to debase the latter's "intrinsic worth and dignity" as a human being, nor did he intend to humiliate or embarrass Juanito, which is essential in the crime of child abuse under R.A. 7610.

It appears that the laying of hands on Juanito had been done at the spur of the moment and in anger; hence, the crime committed is only slight physical injuries

7. How are felonies committed? Explain each. (2015 Bar Question)

SUGGESTED ANSWER:

Felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*). There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill (Article 3 of Revised Penal Code).

8. AA misrepresented to the complainant that he had the power, influence, authority and business to obtain overseas employment upon payment of placement fee. AA duly collected the placement fee from complainant. As per certification of the Philippine Overseas Employment Administration, AA did not possess any authority or license for overseas employment. Is it

proper to file two (2) separate Informations for illegal recruitment under the Labor Code and for estafa by means of deceit? (2012 Bar Question)

- A) No. The filing of two (2) separate Informations for illegal recruitment under the Labor Code and for estafa by means of deceit for the same act is violative of the principle against double jeopardy.
- B) No. One Information for a complex crime of illegal recruitment with estafa by means of deceit should be filed, instead of two (2) separate Informations.
- C) No. A person convicted of illegal recruitment under the Labor Code may not, for the same act, be separately convicted of estafa by means of deceit.
- D) Yes. A person convicted of illegal recruitment under the Labor Code may, for the same act, be separately convicted of estafa by means of deceit.

SUGGESTED ANSWER:

D. It is well-settled that a person who has committed illegal recruitment may be charged and convicted separately of the crime of illegal recruitment under RA No. 8042 and estafa since the crime of illegal recruitment is *malum prohibitum*, while estafa is *malum in se*.

Moreover, although the two crimes may arise from the same facts, they are not the same. Not all acts, which constitute estafa, necessarily establish illegal recruitment, for estafa is wider in scope and covers deceits whether or not related to recruitment activities. More importantly, the element of damage, which is essential in estafa case, is immaterial in illegal recruitment.

Further, under Section 6 of RA No. 8042 as amended by RA No. 10022, the filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under existing laws, rules or regulations. If the recruitment is undertaken to defraud another, the recruiter may be held liable for estafa under paragraph 2(a) of Article 315 of the Revised Penal Code and illegal recruitment.

2. Applicability and effectivity of the RPC

a. Generality

9. *Pierce* is a French diplomat stationed in the Philippines. While on EDSA and driving with an expired license, he hit a pedestrian who was crossing illegally. The pedestrian died. *Pierce* was charged with reckless imprudence resulting in homicide. In his defense, he claimed diplomatic immunity.

Is *Pierce* correct? (2014 Bar Question)

SUGGESTED ANSWER:

Yes, *Pierce* is correct. *Pierce*, being a French diplomat stationed in the Philippines, is exempted from the general application of our penal laws. He enjoys diplomatic immunity from suit.

10. Assume that you are a member of the legal staff of Senator Salcedo who wants to file a bill about imprisonment at the National Penitentiary in Muntinlupa. He wants to make the State prison a revenue earner for the country through a law providing for premium accommodations for prisoners (other than those under maximum security status) whose wives are allowed conjugal weekend visits, and for those who want long-term premium accommodations.

For conjugal weekenders, he plans to rent out rooms with hotel-like amenities at rates equivalent

to those charged by 4-star hotels; for long-term occupants, he is prepared to offer room and board with special meals in air conditioned single- occupancy rooms, at rates equivalent to those charged by 3-star hotels.

What advice will you give the Senator from the point of view of criminal law, taking into account the purpose of imprisonment (7%) and considerations of ethics and morality (3%)? (2013 Bar Question)

SUGGESTED ANSWER:

I would advise Senator Salcedo to abandon his proposed bill as it will result in economic inequality in the field of criminal justice. The bill runs afoul with the equal protection clause of the 1987 Constitution which does not merely bar the creation of inequalities but commands, as well, the elimination of existing inequalities.

Additionally, the purpose of imposing penalties, which is to secure justice, retribution and reformation, will be defeated should the bill eventually become a law.

11. Principles of public international law exempt certain individuals from the Generality characteristic of criminal law. Who among the following are NOT exempt from the Generality rule? (2011 Bar Question)
- A) Ministers Resident
 - B) Commercial Attache of a foreign country
 - C) Ambassador
 - D) Chiefs of Mission

SUGGESTED ANSWER: B.

b. Territoriality

12. Ando, an Indonesian national who just visited the Philippines, purchased a ticket for a passenger vessel bound for Hong Kong. While on board the vessel, he saw his mortal enemy Iason, also an Indonesian national, seated at the back portion of the cabin and who was busy reading a newspaper. Ando stealthily approached Iason and when he was near him, Ando stabbed and killed Iason. The vessel is registered in Malaysia. The killing happened just a few moments after the vessel left the port of Manila. Operatives from the PNP Maritime Command arrested Ando. Presented for the killing of Iason, Ando contended that he did not incur criminal liability because both he and the victim were Indonesians. He likewise argued that he could not be prosecuted in Manila because the vessel is a Malaysian-registered ship. Discuss the merits of Ando's contentions. (2015 Bar Question)

SUGGESTED ANSWER:

Both contentions of Ando lack merit.

Firstly, under the generality principle, penal laws shall be obligatory upon all who live or sojourn in the Philippines territory, except as provided in treaties and laws of preferential application. Thus, the fact that Ando is an Indonesian does not exclude him from the operation of penal laws.

Secondly, the contention of Ando that he could not be prosecuted in Manila because the vessel is a Malaysian-registered ship is without merit, as under the English Rule, which our jurisdiction recognizes and follows, crimes committed aboard a vessel within the territorial waters of a country are triable in the courts

of such country except when the crimes merely affect things within the vessel or when they only refer to the internal management thereof. Hence, Ando may be prosecuted in Manila.

ADDITIONAL ANSWER:

Under Section 27 of the Convention of the Law of the Sea, the criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea in connection with any crime committed on board except, if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea.

13. A foreigner residing in Hong Kong counterfeits a twenty-peso bill issued by the Philippine Government. May the foreigner be prosecuted before a civil court in the Philippines? (2012 Bar Question)
- A) No. The provisions of the Revised Penal Code are enforceable only within the Philippine Archipelago.
 - B) No. The Philippine Criminal Law is binding only on persons who reside or sojourn in the Philippines.
 - C) No. Foreigners residing outside the jurisdiction of the Philippines are exempted from the operation of the Philippine Criminal Law.
 - D) Yes. The provisions of the Revised Penal Code are enforceable also outside the jurisdiction of the Philippines against those who should forge or counterfeit currency notes of the Philippines or obligations and securities issued by the Government of the Philippines.

SUGGESTED ANSWER:

D. The provision of the Revised Penal Code shall be enforced outside the jurisdiction of the Philippines against those who should forge or counterfeit any Philippine currency note or obligations and securities issued by the government (Article 2).

14. Which of the following crimes is an exception to the Territoriality Rule in Criminal law? (2011 Bar Question)
- A) Violation of the Trademark Law committed by an alien in the Philippines.
 - B) Forgery of US bank notes committed in the Philippines.
 - C) Crime committed by a Filipino in the disputed Spratly's Island.
 - D) Plunder committed at his place of assignment abroad by a Philippine public officer.

SUGGESTED ANSWER: D.

15. When committed outside the Philippine territory, our courts DO NOT have jurisdiction over the crime of: (2011 Bar Question)
- A) treason.
 - B) piracy.
 - C) espionage.
 - D) rebellion.

SUGGESTED ANSWER: D.

16. What court has jurisdiction when an Indonesian crew murders the Filipino captain on board a vessel of Russian registry while the vessel is anchored outside the breakwaters of the Manila bay? (2011 Bar Question)
- A) The Indonesian court.
 - B) The Russian court.
 - C) The Philippine court.

D) Any court that first asserts jurisdiction over the case.

SUGGESTED ANSWER: C.

17. Hubert and Eunice were married in the Philippines. Hubert took graduate studies in New York and met his former girlfriend Eula. They renewed their friendship and finally decided to get married. The first wife, Eunice, heard about the marriage and secures a copy of the marriage contract in New York. Eunice filed a case of Bigamy against Hubert in the Philippines.

A) Will the case prosper? Explain. (2008 Bar Question)

B) If Eunice gave her consent to the second marriage, what will your answer be? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

A) No, because the Philippine Courts have no jurisdiction over a crime committed outside of the Philippine territory. Under the principle of territoriality, penal laws, specifically the RPC, are enforceable only within the bounds of our territory (Art. 2, RPC)

B) The answer will be the same. The consent of Eunice would not confer jurisdiction on Philippine Courts.

c. Prospectivity

18. When a penal law is absolutely repealed such that the offense is decriminalized, a pending case charging the accused of the repealed crime is to be: (2011 Bar Question)

A) prosecuted still since the charge was valid when filed.

B) dismissed without any precondition.

C) dismissed provided the accused is not a habitual delinquent.

D) prosecuted still since the offended party has a vested interest in the repealed law.

SUGGESTED ANSWER: B.

3. *Pro reo* principle

19. What is the doctrine of *pro reo*? How does it relate to Article 48 of the Revised Penal Code? (2010 Bar Question)

SUGGESTED ANSWER:

Under the doctrine of *pro reo*, penal laws are to be construed liberally to the offender as is consistent with the constitutional guarantee that an accused shall be presumed innocent until his guilt is established beyond reasonable doubt.

Following the *pro reo* doctrine, under Art. 48 of the Revised Penal Code, crimes are complexed and punished with a single penalty since an accused who commits two crimes with a single criminal impulse demonstrates lesser perversity than when committed by different acts and several criminal resolutions. However, Art. 48 shall be applied only when it would bring about the imposition of a penalty lesser than the penalties if prosecuted separately instead of being complexed.

B. Felonies

1. Criminal liabilities and felonies

20. Subsidiary liability may be imposed on the following, except____. (2013 Bar Question)

- A) innkeepers, in relation to the crime committed in their establishment
- B) employers engaged in industry, for the crime committed by their employees
- C) parents of minors who act with discernment in committing crimes
- D) hospital administrators or owners, for crimes committed by their hospital nurses

SUGGESTED ANSWER:

C. Under section 6 of R.A. 9344, the exemption from criminal liability of a child does not include the exemption from civil liability. If the child is exempted from criminal liability, the person who has legal authority or control (i.e. the father or the mother) is principally liable pursuant to Article 101 of the RPC.

[Note: the question pertains to a matter which is excluded in the coverage of the 2013 Bar Examination on Criminal Law].

21. Felonies are classified according to manner or mode of execution into felonies committed by means of deceit (dolo) and by means of fault (culpa). Which of the following causes may not give rise to culpable felonies? (2012 Bar Question)

- A) Imprudence;
- B) Malice;
- C) Negligence;
- D) Lack of foresight.

SUGGESTED ANSWER:

B. Culpable crime is committed by means of negligence or imprudence. Imprudence indicates a deficiency in action, which usually involves lack of skill; while negligence indicates a deficiency of perception, which usually involves lack of foresight. (The Revised Penal Code by Justice Luis Reyes).

a. Grave vs. less grave vs. light felonies

22. When are light felonies punishable? (2012 Bar Question)

- A) Light felonies are punishable in all stages of execution.
- B) Light felonies are punishable only when consummated.
- C) Light felonies are punishable only when consummated, with the exception of those committed against persons or property.
- D) Light felonies are punishable only when committed against persons or property.

SUGGESTED ANSWER:

C. Light felonies are punishable only when consummated, with the exception of those committed against persons or property (Article 7 of the RPC).

23. Is the penalty for impossible crime applicable to one who attempts to commit a light felony of impossible materialization? (2012 Bar Question)

- A) No. The evil intent of the offender cannot be accomplished.

- B) No. An attempt to commit light felony constitutes an employment of inadequate or ineffectual means.
- C) No. The penalty for consummated light felony is less than the penalty for impossible crime.
- D) No. In impossible crime, the act performed should not constitute a violation of another offense.

SUGGESTED ANSWER:

A. The penalty for impossible crime is *arresto mayor* or a fine from 200 to 500 pesos (Article 59 of the Revised Penal Code) while the penalty for light felony is *arresto menor* or a fine not exceeding P200 or both.

Article 59 should not be made applicable to one who attempts to commit a light felony of impossible materialization since the penalty for the former is graver than that for the latter. It would be unfair to punish a person, who failed to commit a light felony since it is impossible to accomplish it, for a graver penalty than that for a person who committed a light felony.

24. The classification of felonies into grave, less grave, and light is important in ascertaining: (2012 Bar Question)
- A) if certain crimes committed on the same occasion can be complexed.
 - B) the correct penalty for crimes committed through reckless imprudence.
 - C) whether the offender is liable as an accomplice.
 - D) what stage of the felony has been reached.

SUGGESTED ANSWER: A.**b. Aberratio ictus, error in personae, and praeter intentionem**

25. What is aberratio ictus? (2015 Bar Question)

SUGGESTED ANSWER:

Aberratio ictus means mistake in the blow. Under the principle of *aberratio ictus*, a person is criminally responsible for committing an intentional felony although the consequent victim is different from that intended due to mistake in the blow, following Article 4 (1) of the Revised Penal Code, which provides that criminal liability shall be incurred by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.

26. Honesto and Wilma were married but had been living separately due to irreconcilable differences. Honesto later met Celia and fell in love with her. Thinking that he could marry Celia if Wilma were to die, Honesto decided to kill Wilma. He secretly followed Wilma for weeks to learn her daily routine. He decided to kill her at night on her way home. On the night he was to kill Wilma, Honesto wore dark clothes so that he would not be easily seen. He waited in the dark alley for Wilma to pass by. He saw someone whom he thought looked like Wilma and shot her with a revolver. The bullet passed through the person's head and grazed another passerby's arm. Some bystanders who heard the shot were able to stop Honesto.

It turned out that Wilma did not report for work on that day, and the one who was shot in the head was Melba, who died. The passerby whose arm was grazed by the bullet required medical attendance for two days. (2015 Bar Question)

- A) What crime(s) did Honesto commit? Explain.

- B) Will your answer be the same, assuming that the other passerby was hit in the left eye which caused his/her blindness? Explain.**

SUGGESTED ANSWER:

- A) Honesto is liable for murder qualified by the circumstance of treachery for killing Melba due to *error in personae* or mistake of identity, and slight physical injuries for the wound sustained by the passerby due to *aberratio ictus* or mistake of blow.
This is because although his intention was to commit parricide, the murder and slight physical injuries are the direct, natural and logical consequence of the act he committed.
- B) No, if the passerby was hit in the left eye causing blindness, the crime committed by Honesto is Murder with Serious Physical Injuries. Serious physical injuries may be made a component of a complex crime under Article 48 of the Revised Penal Code. Thus, since a single act of shooting the victim constitutes murder, and serious physical injuries, Article 48 may be applied.

- 27. Out of spite and simply intending to put Gina to shame for breaking off with him, Ritchie emptied a gallon of motor oil on the school's stairway where Gina usually passed. Gina, unaware of what Ritchie did, used the slippery stairway and slipped, hitting her head on the stairs. Gina died from brain hemorrhage.**

What crime did Ritchie commit? (2013 Bar Question)

- A) Murder.
B) Reckless imprudence resulting in homicide.
C) Homicide.
D) Impossible crime of homicide.
E) None.

SUGGESTED ANSWER:

C. Homicide (People v. Pugay, G.R. No. L-74324, November 17, 1988).

- 28. Under which of the following circumstances is an accused not liable for the result not intended? (2012 Bar Question)**
- A) Accused is not criminally liable for the result not intended when there is mistake in the identity of the victim.
B) Accused is not criminally liable for the result not intended when there is mistake in the blow.
C) Accused is not criminally liable for the result not intended when the wrongful act is not the proximate cause of the resulting injury.
D) Accused is not criminally liable for the result not intended when there is mistake of fact constituting an involuntary act.

SUGGESTED ANSWER:

D. Since the Supreme Court had applied the “mistake of fact” doctrine in relation to the justifying circumstance of self-defense (United States v. Ah Chong, 15 Phil. 488), defense of person and right (US v. Bautista, G.R. No. 10678, August 17, 1915), defense of honor (United States v. Apego, 23 Phil. 391), performance of duty, (People v. Mamasalaya, G.R. No. L- 4911, February 10, 1953), and the exempting circumstance of obedience of an order of superior officer (People v. Beronilla, G.R. No. L-4445, February 28, 1955). Hence, it can likewise be applied in relation to circumstance of lack of voluntariness, such as the circumstance of irresistible force or uncontrollable fear.

- 29. X, without intent to kill, aimed his gun at Z and fired it, hitting the latter who died as a consequence. Under the circumstances: (2011 Bar Question)**

- A) X cannot plead *praeter intentionem* since the intent to kill is presumed from the killing of the victim.
- B) X may plead *praeter intentionem* since he intended only to scare, not kill Z.
- C) X may plead *aberratio ictus* as he had no intention to hit Z.
- D) X may plead commission of only Discharge of Firearm as he had no intent to kill Z when he fired his gun.

SUGGESTED ANSWER: A.

30. X inflicted serious injuries on Y. Because of delay in providing medical treatment to Y, he died. Is X criminally liable for the death of Y? (2011 Bar Question)
- A) Yes because the delay did not break the causal connection between X's felonious act and the injuries sustained by Y.
 - B) Yes because any intervening cause between the infliction of injury and death is immaterial.
 - C) No because the infliction of injury was not the immediate cause of the death.
 - D) No because the delay in the administration of the medical treatment was an intervening cause.

SUGGESTED ANSWER: A.

31. X inflicted violent kicks on vital parts of E's body. E nevertheless was able to flee for fear of his life. Refusing to undergo treatment for his injuries, E died 3 days later. Is X liable for E's death? (2011 Bar Question)
- A) No, since kicks on the body cannot cause death.
 - B) No, since it took too long for death to occur.
 - C) Yes, since E cannot be compelled to undergo medical treatment.
 - D) Yes, since it was a natural result of the injuries X inflicted on E.

SUGGESTED ANSWER: D.

32. Charlie hated his classmate, Brad, because the latter was assiduously courting Lily, Charlie's girlfriend. Charlie went to a veterinarian and asked for some poison on the pretext that it would be used to kill a very sick, old dog. Actually, Charlie intended to use the poison on Brad.

The veterinarian mistakenly gave Charlie a non-toxic powder which, when mixed with Brad's food, did not kill Brad.

Did Charlie commit any crime? If so, what and why? If not, why not? (2009 Bar Question)

SUGGESTED ANSWER:

Charlie committed an impossible crime of murder. His act of mixing the non-toxic powder with Brad's food, done with intent to kill, would have constituted murder which is a crime against persons, had it not been for the employment of a means which, unknown to him, is ineffectual (Art. 4, par. 2, RPC).

33. While Carlos was approaching his car, he saw it being driven away by Paolo, a thief. Carlos tried to stop Paolo by shouting at him, but Paolo ignored him. To prevent his car from being carjacked, Carlos drew his gun, aimed at the rear wheel of the car and fired. The shot blew the tire which caused the car to veer out of control and collide with an oncoming tricycle, killing the tricycle driver.

What is the criminal liability of Carlos, if any? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

Carlos has no criminal liability, he only acted in the lawful exercise of his right. It is his right to protect his property, and what he did was to aim and hit the wheel of the car and not any particular person.

c. Impossible crime

34. *A*, in a public place, fired his gun at *B* with the intention of killing *B*, but the gun did not fire because the bullet is a dud. The crime is: (2014 Bar Question)

- A) attempted homicide
- B) grave threat
- C) impossible crime
- D) alarm and scandal

SUGGESTED ANSWER: A

35. *Puti* detested *Pula*, his roommate, because *Pula* was courting *Ganda*, whom *Puti* fancied. One day, *Puti* decided to teach *Pula* a lesson and went to a veterinarian (*Vet*) to ask for poison on the pretext that he was going to kill a sick pet, when actually *Puti* was intending to poison *Pula*. The *Vet* instantly gave *Puti* a non-toxic solution which, when mixed with *Pula*'s food, did not kill *Pula*. (2014 Bar Question)

- A) What crime, if any, did *Puti* commit?
- B) Would your answer be the same if, as a result of the mixture, *Pula* got an upset stomach and had to be hospitalized for 10 days?

SUGGESTED ANSWER:

- A) *Puti* committed the impossible crime of murder given that all the elements are present: the act was committed with the intent to kill; the act would have resulted to murder, which is a crime against persons; and the crime was not accomplished because the solution turned out to be non-toxic, hence, the employment of ineffectual means.
- B) No, if as a result of the mixture, *Pula* got an upset stomach and had to be hospitalized for 10 days, the crime committed by *Puti* is Less Serious Physical Injuries and not an impossible crime because the last element of an impossible crime requires the act does not constitute a violation of another provision of the RPC.

36. *Carla*, four (4) years old, was kidnapped by *Enrique*, the tricycle driver engaged by her parents to drive her to and from school every day. *Enrique* wrote a ransom note demanding that *Carla*'s parents pay him P500,000.00 ransom in exchange for her liberty. However, before the ransom note could be received by *Carla*'s parents, *Enrique*'s hideout was discovered by the police. *Carla* was rescued while *Enrique* was arrested. The prosecutor considered that the ransom note was never received by *Carla*'s parents and filed a case of "Impossible crime to commit kidnapping" against *Enrique*.

Is the prosecutor correct? If he is not correct, can he instead file a case of grave coercion? (2014 Bar Question)

SUGGESTED ANSWER:

The Prosecutor is not correct because there is no “Impossible crime to commit kidnapping”. This is because kidnapping is a Crime against Personal Liberty and Security. Also, even if the ransom note was not received by Carla’s parents, under the RPC, the crime of kidnapping and serious illegal detention for ransom is consummated upon the extortion of ransom regardless if the ransom note was received or that ransom was paid.

Lastly, the Prosecutor cannot file a case of grave coercion because the crime committed, as explained above, is kidnapping for ransom.

37. Can there be a frustrated impossible crime? (2012 Bar Question)

- A) Yes. When the crime is not produced by reason of the inherent impossibility of its accomplishment, it is a frustrated impossible crime.
- B) No. There can be no frustrated impossible crime because the means employed to accomplish the crime is inadequate or ineffectual.
- C) Yes. There can be a frustrated impossible crime when the act performed would be an offense against persons.
- D) No. There can be no frustrated impossible because the offender has already performed the acts for the execution of the crime.

SUGGESTED ANSWER:

D. There can be no frustrated impossible because the offender has already performed the acts for the execution of the crime.

d. Stages of execution

38. *Charges d'affaires* Volvik of Latvia suffers from a psychotic disorder after he was almost assassinated in his previous assignment. One day, while shopping in a mall, he saw a group of shoppers whom he thought were the assassins who were out to kill him. He asked for the gun of his escort and shot ten (10) people and wounded five (5) others before he was subdued. The wounded persons required more than thirty (30) days of medical treatment. What crime or crimes, if any, did he commit? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

Volvik committed five frustrated murders for the unwounded victims and five frustrated murders for the wounded victims. The intent to kill can be seen in the nature of the weapon used and extent of the wounds sustained by the five victims. Treachery also qualified the crime to murder since the sudden attack rendered the victims defenseless. However, he is immune from criminal prosecution since the position of Volvik as *charges de affaires* is vested with *blanket diplomatic immunity* from criminal suit (*Minucher v. Hon. CA, G.R. No. 142396, 11 February 2003*).

39. Senio planned to burn Bal' s house. One evening, during a drinking spree at his house, Senio told his friends what he intended to do and even showed them the gasoline in cans that he would use for the purpose. Carlo, a common friend of Senio and Bal, was present at the drinking spree. He was still sober when Senio told them his plans. Before going home, Carlo warned Bal that Senio would burn his house and had already bought gasoline that would be used for the purpose. Bal reported the matter to the police authorities. Meanwhile, Senio went to Bal' s house and proceeded

to pour gasoline around the walls of the house and it was at that point when he was caught by the police. (2015 Bar Question)

What crime did Senio commit, if any? Explain.

SUGGESTED ANSWER:

Senio is liable for attempted arson. The act of pouring gasoline around the walls of the house following the manifestation of his intent to burn the house of Bal, commenced the commission of the crime of arson. However, he did not perform all acts to execute his criminal design due to a cause other than his spontaneous desistance, and that is, having been caught by the police.

40. In an attempted felony, the offender's preparatory act: (2011 Bar Question)

- A) itself constitutes an offense.
- B) must seem connected to the intended crime.
- C) must not be connected to the intended crime.
- D) requires another act to result in a felony.

SUGGESTED ANSWER: D.

e. Continuing crimes

41. Angelo devised a Ponzi Scheme in which 500 persons were deceived into investing their money upon a promise of a capital return of 25%, computed monthly, and guaranteed by post-dated checks. During the first two months following the investment, the investors received their profits, but thereafter, Angelo vanished.

Angelo was charged with 500 counts of estafa and 2,000 counts of violation of Batas Pambansa (BP) 22. In his motion to quash, Angelo contends that he committed a continued crime, or *delito continuado*, hence, he committed only one count of estafa and one count of violation of BP 22.

What is *delito continuado*? (2009 Bar Question)

SUGGESTED ANSWER:

Delito continuado refers to a crime constituted by several overt acts committed by the offender in one place, at about the same time, and all such overt acts violate one and the same provision of penal law, thus demonstrating that all such acts are the product of a single indivisible criminal relation. Hence, all said acts are considered as one crime only.

f. Complex crimes and composite crimes

42. During the nationwide transport strike to protest the phase out of old public utility vehicles, striking jeepney drivers Percy, Pablo, Pater and Sencio, each armed with guns, hailed several MMDA buses then providing free transport to the stranded public to stop them from plying their routes. They later on commandeered one of the buses without allowing any of the passengers to alight, and told the driver to bring the bus to Tanay, Rizal.

Upon reaching a remote area in Tanay, Percy, Pablo, Pater and Sencio forcibly divested the passengers of their cash and valuables. They ordered the passengers to leave thereafter. Then, they burned the bus. When a *tanod* of the *barangay* of the area came around to intervene, Pater fired at him, instantly killing him.

After Percy, Pablo, Pater and Sencio were arrested, the police authorities recommended them to be charged with the following crimes, to wit: (1) *carnapping*; (2) *robbery*; (3) *direct assault with homicide*; (4) *kidnapping*; and (5) *arson*. State your legal opinion on the recommendation of the police authorities on the criminal liabilities incurred by Percy, Pablo, Pater and Sencio. (2017 Bar Question)

SUGGESTED ANSWER:

Percy, Pablo, Pater and Sencio committed the crime Robbery for having commandeered the bus for purpose of robbing the passengers. Moreover, since the taking of the victims was merely to commit robbery and not to transport them to another place for purpose of detention, the crime committed is *not kidnapping*, but robbery.

Moreover, since the death of the Barangay Tanod resulted by reason or on occasion of robbery, the crime committed is a special complex crime of robbery with homicide. Also, even though only Pater killed the Tanod, Percy, Pablo, and Sencio are also liable for robbery with homicide since they failed to attempt to prevent the same.

Additionally, since the crime committed is robbery with homicide, all other felonies such as *arson and direct assault* committed by reason or on occasion of robbery shall be integrated into the special complex crime of robbery with homicide.

Further, since the accused unlawfully took an MMDA bus without the consent of its owner, giving rise to the presumption of their intent to gain, it appears that all of the elements of carnapping are present, namely: (a) the taking of the motor vehicle which belongs to another; (b) the taking is without consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (c) the taking is done with intent to gain. Finally, given that carnapping is punishable under a special law, it shall be considered as a crime separate from robbery with homicide.

43. Pedro, Pablito, Juan and Julio, all armed with bolos, robbed the house where Antonio, his wife, and three (3) daughters were residing. While the four were ransacking Antonio's house, Julio noticed that one of Antonio's daughters was trying to escape. He chased and caught up with her at a thicket somewhat distant from the house, but before bringing her back, raped her. (2016 Bar Question)

- A) What crime or crimes, if any, did Pedro, Pablito, Juan and Julio commit? Explain. (2.5%)
- B) Suppose, after the robbery, the four took turns in raping the three daughters inside the house, and, to prevent identification, killed the whole family just before they left. What crime or crimes, if any, did the four malefactors commit? (2.5%)

SUGGESTED ANSWER:

- A) Pedro, Pablito and Juan are liable for robbery by band, whereas Julio is liable for special complex crime of robbery with rape.

Julio's liability arose when he raped the daughter of Antonio on the occasion or by reason of robbery. Even if the place of robbery is different from that of rape, given the direct connection between the two crimes the crime is still special complex crime of robbery with rape.

Pedro, Pablito and Juan are liable for robbery by band. There is a band in this case since more than three armed malefactors took part in the commission of a robbery, and following Article 296 of the Revised Penal Code, any member of a band, who is present at the commission of a robbery by the

band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same. They are not liable, however, for rape since they were not present when the victim was raped and thus, they had no opportunity to prevent the same.

- B) The four shall all be liable for a special complex crime of robbery with homicide. In this special complex crime, it is immaterial that several persons are killed or that multiple rapes are committed by reason or on the occasion of the crime since the homicides and multiple rapes shall be integrated into one and indivisible felony of robbery with homicide.

44. **A, an OFW, worked in Kuwait for several years as a chief accountant, religiously sending to his wife, B, 80% of all his earnings. After his stint abroad, he was shocked to know that B became the paramour of a married man, C, and that all the monies he sent to B were given by her to C. To avenge his honor, A hired X, Y and Z and told them to kidnap C and his wife, D, so that he can inflict injuries on C to make him suffer, and humiliate him in front of his wife. X, Y and Z were paid P20,000. Each and were promised a reward of P50, 000.00 each once the job is done.**

At midnight, A, with the fully armed X, Y and Z, forcibly opened the door and gained entrance to the house of C and D. C put up a struggle before he was subdued by A's group. They boarded C and D in a van and brought the two to a small hut in a farm outside Metro Manila. Both hands of C and D were tied. With the help of X, Y and Z, A raped D in front of C. X, Y and Z then took turns in raping D, and subjected C to torture until he was black and blue and bleeding profusely from several stab wounds. A and his group set the hut on fire before leaving, killing both C and D. X, Y and Z were paid their reward. Bothered by his conscience, A surrendered the next day to the police, admitting the crimes he committed.

As the RTC judge, decide what crime or crimes were committed by A, X, Y and Z, and what mitigating and aggravating circumstances will be applied in imposing the penalty. Explain. (2016 Bar Question)

SUGGESTED ANSWER:

A, X, Y and Z are liable for two counts of special complex crime kidnapping with murder qualified by means of fire, since C and D were killed in the course of the detention. In this special complex crime, it is immaterial that other crimes were committed since multiple rapes and arson were committed by reason or on occasion of kidnapping. Thus, they shall be integrated into one and indivisible felony of kidnapping with murder.

The mitigating circumstances of passion and voluntary surrender can be appreciated in favor of A. The aggravating circumstances of unlawful entry, by means of fire, and treachery can be appreciated against A, X, Y and Z.

45. **Sexy boarded a taxi on her way home from a party. Because she was already tipsy, she fell asleep. Pogi, the taxi driver, decided to take advantage of the situation and drove Sexy to a deserted place where he raped her for a period of two (2) weeks.**

What crime did Pogi commit? (2014 Bar Question)

SUGGESTED ANSWER:

Pogi committed the special complex crime of Kidnapping and Serious Illegal Detention with Rape.

All the elements of Kidnapping and Serious Illegal Detention are present given that Pogi, a private individual, kidnapped and detained Sexy, who is a female, for more than 3 days.

The special complex crime of Kidnapping and Serious Illegal Detention with Rape resulted because *Sexy* was raped as a consequence of the detention. Being a special complex crime, regardless of the number of times the victim had been raped, there is only one single indivisible offense of Kidnapping and Serious Illegal Detention with Rape.

46. Dagami concealed Bugna's body and the fact that he killed him by setting Bugna's house on fire. What crime or crimes did Dagami commit? (2011 Bar Question)
- A) Murder, the arson being absorbed already
 - B) Separate crimes of murder and arson
 - C) Arson, the homicide being absorbed already
 - D) Arson with murder as a compound crime

SUGGESTED ANSWER: B.

47. A special complex crime is a composite crime: (2011 Bar Question)
- A) made up of 2 or more crimes defined in the Penal Code.
 - B) with its own definition and special penalty provided by the Penal Code.
 - C) with its own definition and special penalty provided by a special penal law.
 - D) made up of 2 or more crimes defined in the Penal Code and special penal laws.

SUGGESTED ANSWER: B.

48. X, intending to kill Y, a store owner, fired at Y from the street, but the shot killed not only Y but also Z who was in the store. As a case of *aberratio ictus*, it is punishable as a: (2011 Bar Question)
- A) complex crime proper.
 - B) special complex crime.
 - C) continuing crime.
 - D) compound crime.

SUGGESTED ANSWER: D.

2. Circumstances affecting criminal liability

a. Justifying circumstances

49. Porthos made a sudden turn on a dark street, and his Rolls-Royce SUV bumped the rear of a parked Cadillac Sedan inside which Aramis was then taking a nap. Angered by the violent impact, Aramis alighted and confronted Porthos who had also alighted. Aramis angrily and repeatedly shouted at Porthos: *Putang ina mo!* Porthos, displaying fearlessness, aggressively shouted back at Aramis: *Wag kang magtapang-tapangan dyan, papatayin kita!* Without saying anything more, Aramis drew his gun from his waist and shot Porthos in the leg. Porthos' wound was not life threatening. . (2017 Bar Question)
- A) What are the kinds of unlawful aggression, and which kind was displayed in this case? Explain your answer.
 - B) Standing trial for *frustrated murder*, Aramis pleaded self-defense. The Prosecution's contention was that the plea of self-defense applied only to consummated killings. Rule, with explanations, on the tenability of Arami's claim of self-defense, and on the Prosecution's contention.

- C) Porthos insisted that the element of treachery was present. To rule out treachery, Aramis asserted that both he and Porthos were then facing and confronting each other when he fired the shot. Rule, with reasons, on the respective contentions.

SUGGESTED ANSWER:

- A) Unlawful aggression is of two kinds: (a) actual or material unlawful aggression, which involves an attack with physical force or with a weapon; and (b) imminent unlawful aggression which refers to an attack that is impending or at the point of happening, and not merely threatening attitude.

In this case, there is neither actual nor imminent unlawful aggression. The statement “papatayin kita” neither constitutes an attack with physical force or with a weapon, nor an impending attack, which is offensive and positively strong.

- B) The prosecution’s contention is not tenable as the claim of self-defense is not confined to consummated killing. Shooting the leg of the victim without killing him may be considered as reasonable means to prevent or repel an actual or imminent unlawful aggression; hence, Arami’s claim of self-defense is tenable.
- C) There is no treachery given that the attack was preceded by heated words. The sudden attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused, because of the provocative act of the victim, where their meeting was purely accidental.

50. Pedro is married to Tessie. Juan is the first cousin of Tessie, while in the market, Pedro saw a man stabbing Juan. Seeing the attack on Juan, Pedro picked up a spade nearby and hit the attacker on his head which caused the latter's death.

Can Pedro be absolved of the killing on the ground that it is in defense of a relative? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

No. Pedro cannot be absolved by invoking defense of a relative since Juan is only his cousin by affinity, and as such, is not a relative of Pedro for purpose of applying the provision on defense of relative.

The relatives of the accused for purpose of defense of relative under Article 11 (2) of the Revised Penal Code are his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree. Relative by affinity *within the same degree* includes the ascendant, descendant, brother or sister of the spouse of the accused. Nevertheless, Pedro can be absolved through the justifying circumstance of defense of stranger considering that Tessie, not being included in the enumeration in Article 11(2) of the Revised Penal Code, is a stranger.

51. Three men gave Arnold fist blows and kicks causing him to fall. As they surrounded and continued hitting him, he grabbed a knife he had in his pocket and stabbed one of the men straight to the heart. What crime did Arnold commit? (2011 Bar Question)
- A) Homicide with incomplete self- defense, since he could have run from his aggressors.
- B) Homicide, since he knew that stabbing a person in the heart is fatal.
- C) Homicide mitigated by incomplete self-defense, since stabbing a person to the heart is excessive.
- D) No crime, since he needed to repel the aggression, employing reasonable means for doing so.

SUGGESTED ANSWER: D.

52. To save himself from crashing into an unlighted truck abandoned on the road, Jose swerved his car to the right towards the graveled shoulder, killing two bystanders. Is he entitled to the justifying circumstance of state of necessity? (2011 Bar Question)
- A) No, because the bystanders had nothing to do with the abandoned truck on the road.
 - B) No, because the injury done is greater than the evil to be avoided.
 - C) Yes, since the instinct of self-preservation takes priority in an emergency.
 - D) Yes, since the bystanders should have kept off the shoulder of the road.

SUGGESTED ANSWER: C.

53. Jack and Jill have been married for seven years. One night, Jack came home drunk. Finding no food on the table, Jack started hitting Jill only to apologize the following day.

A week later, the same episode occurred – Jack came home drunk and started hitting Jill.

Fearing for her life, Jill left and stayed with her sister. To woo Jill back, Jack sent her floral arrangements of spotted lilies and confectioneries. Two days later, Jill returned home and decided to give Jack another chance. After several days, however, Jack again came home drunk. The following day, he was found dead.

Jill was charged with parricide but raised the defense of "battered woman syndrome."

Would the defense prosper despite the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Yes, Section 26 of Rep. Act No. 9262 provides that victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

54. Macky, a security guard, arrived home late one night after rendering overtime. He was shocked to see Joy, his wife, and Ken, his best friend, in the act of having sexual intercourse. Macky pulled out his service gun and shot and killed Ken.

The court found that Ken died under exceptional circumstances and exonerated Macky of murder but sentenced him to *destierro*, conformably with Article 247 of the Revised Penal Code. The court also ordered Macky to pay indemnity to the heirs of the victim in the amount of P50,000.

Did the court correctly order Macky to pay indemnity even though he was exonerated of murder? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

No, the court did not act correctly in ordering the accused to indemnify the victim. Since the killing of Ken was committed under the exceptional circumstances in Article 247, Revised Penal Code, it is the consensus that no crime was committed and that banishment (*destierro*) is intended more for the protection of the offender rather than as a penalty. Thus, there is no basis for an award of indemnity given that there is no criminal liability.

b. Exempting circumstances

55. Insuperable cause is an exempting circumstance which may be applied to: (2011 Bar Question)

- A) robbery.
- B) misprision of treason.
- C) homicide.
- D) rebellion.

SUGGESTED ANSWER: B.

56. Immediately after murdering Bob, Jake went to his mother to seek refuge. His mother told him to hide in the maid's quarters until she finds a better place for him to hide. After two days, Jake transferred to his aunt's house. A week later, Jake was apprehended by the police.

Can Jake's mother and aunt be made criminally liable as accessories to the crime of murder? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Jake's mother is exempt from criminal liability by express provision of Article 20 of the Revised Penal Code. Notwithstanding her act of harboring and concealing Jake, being an ascendant to Jake, she is exempt.

On the other hand, the criminal liability of Jake's aunt depends on her knowledge of the felony committed. If she knew, her act of harboring and concealing Jake would render her criminally liable as accessory to the crime of murder; otherwise, she would not be liable

57. While his wife was on a 2-year scholarship abroad, Romeo was having an affair with his maid Dulcinea. Realizing that the affair was going nowhere, Dulcinea told Romeo that she was going back to the province to marry her childhood sweetheart. Clouded by anger and jealousy, Romeo strangled Dulcinea to death while she was sleeping in the maid's quarters.

The following day, Romeo was found catatonic inside the maid's quarters. He was brought to the National Center for Mental Health (NCMH) where he was diagnosed to be mentally unstable.

Charged with murder, Romeo pleaded insanity as a defense.

A) Will Romeo's defense prosper? Explain. (2010 Bar Question)

B) While his wife was on a 2-year scholarship abroad, Romeo was having an affair with his maid Dulcinea. Realizing that the affair was going nowhere, Dulcinea told Romeo that she was going back to the province to marry her childhood sweetheart. Clouded by anger and jealousy, Romeo strangled Dulcinea to death while she was sleeping in the maid's quarters.

The following day, Romeo was found catatonic inside the maid's quarters. He was brought to the National Center for Mental Health (NCMH) where he was diagnosed to be mentally unstable.

Charged with murder, Romeo pleaded insanity as a defense.

What is the effect of the diagnosis of the NCMH on the case? (2010 Bar Question)

SUGGESTED ANSWER:

- A) No, Romeo's defense of insanity will not prosper because insanity as a defense must have existed and proven to exist at the precise moment when the crime was being committed.
- B) The effect of the diagnosis made by NCMH is possibly a suspension of the proceedings against Romeo and his commitment to appropriate institution for treatment until he could already understand the proceedings.

c. Mitigating circumstances**58. Which of the following is not a privilege mitigating circumstance? (2014 Bar Question)**

- A) 17-year-old offender
- B) 14-year-old offender
- C) incomplete self-defense
- D) incomplete defense of a relative

SUGGESTED ANSWER: B**59. Passion or obfuscation may be appreciated _____. (2013 Bar Question)**

- A) if it arises from jealousy in an amorous relationship between a married man and a single woman
- B) if it arises from jealousy of a man who has been living-in with the woman for the past 20 years
- C) if it arises from jealousy with immoral, lustful and vindictive sentiments of the offender against the victim
- D) in none of the above situations

SUGGESTED ANSWER:

B. In *U.S. v. dela Cruz* (G.R. No. L-7094, March 29, 1912), the Supreme Court appreciated the mitigating circumstance of passion and obfuscation wherein the accused, in the heat of passion, killed the deceased, who had been his querida (concubine or lover), upon discovering her in flagrante in carnal communication with a mutual acquaintance.

60. Who among the following accused is entitled to a privileged mitigating circumstance that would lower the impossible penalty by one degree? (2013 Bar Question)

- A) A minor above 15 years old and below 18 years old who acted with discernment.
- B) One who, in fulfillment of his duty to carry out the warrant of arrest of a fugitive, shot the fugitive to death without ascertaining his identity.
- C) One who defended himself against an unlawful aggression but used unreasonable means and gave provocation.
- D) All of the above.

SUGGESTED ANSWER:

D. Letter (A) is privileged mitigating circumstance under Article 68(2) of the revised Penal Code; Letter (B), an incomplete justifying circumstance of fulfillment of duty, and letter (C), an incomplete self-defense, are also privileged mitigating circumstances under Article 69 of the Revised Penal Code.

61. A killed M. After the killing, A went to the Barangay Chairman of the place of incident to seek protection against the retaliation of M's relatives. May voluntary surrender be appreciated as a

mitigating circumstance in favor of A? (2012 Bar Question)

- A) Yes. A surrendered to the Barangay Chairman who is a person in authority.
- B) Yes. The surrender of A would save the authorities the trouble and expense for his arrest.
- C) No. A did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killing or to save the authorities the trouble and expenses necessary for his search and capture.
- D) No. The surrender to the Barangay Chairman is not surrender to the proper authorities.

SUGGESTED ANSWER:

C. No. A did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killing or to save the authorities the trouble and expenses necessary for his search and capture.

Surrender is not voluntary where the accused went to Barangay Chairman after the killings to seek protection against the retaliation of the victim's relatives. Considering that he did not unconditionally submit himself to the authorities to acknowledge his participation in the killings or to save the authorities the trouble and expense for his arrest, the surrender is not a mitigating circumstance.

- 62. Distinguish a privileged mitigating circumstance from an ordinary mitigating circumstance as to reduction of penalty and offsetting against aggravating circumstance/s. (2012 Bar Question)**

SUGGESTED ANSWER:

The distinction between ordinary and privilege mitigating circumstances are: (a) the former's presence has the effect of applying the divisible penalty in its minimum period, while the latter has the effect of reducing the penalty one or two degrees lower; and (b) the former can be off-set by the aggravating circumstances, while the latter cannot.

- 63. The presence of a mitigating circumstance in a crime: (2011 Bar Question)**

- A) increases the penalty to its maximum period.
- B) changes the gravity of the offense.
- C) affects the imposable penalty, depending on other modifying circumstances.
- D) automatically reduces the penalty.

SUGGESTED ANSWER: C.

- 64. As a modifying circumstance, insanity: (2011 Bar Question)**

- A) is in the nature of confession and avoidance.
- B) may be presumed from the offender's previous behavior.
- C) may be mitigating if its presence becomes apparent subsequent to the commission of the crime.
- D) exempts the offender from criminal liability whatever the circumstances

SUGGESTED ANSWER: A.

- 65. To mitigate his liability for inflicting physical injury to another, an accused with a physical defect must prove that such defect restricted his freedom of action and understanding. This proof is not required where the physical defect consists of: (2011 Bar Question)**

- A) a severed right hand.
- B) complete blindness.
- C) being deaf mute and dumb.
- D) a severed leg.

SUGGESTED ANSWER: B.

66. An extenuating circumstance, which has the same effect as a mitigating circumstance, is exemplified by: (2011 Bar Question)
- A) the mother killing her 2-day old child to conceal her dishonor.
 - B) the accused committing theft out of extreme poverty.
 - C) the accused raping his victim in extreme state of passion.
 - D) the accused surrendering the weapon he used in his crime to the authorities.

SUGGESTED ANSWER: A.

67. Minority is a privileged mitigating circumstance which operates to reduce the penalty by a degree where the child is: (2011 Bar Question)
- A) 15 years and below acting without discernment.
 - B) above 15 years but below 18 acting without discernment.
 - C) below 18 years acting with discernment.
 - D) 18 years old at the time of the commission of the crime acting with discernment.

SUGGESTED ANSWER: C.

68. The mitigating circumstance of immediate vindication of a grave offense cannot be appreciated in a case where: (2011 Bar Question)
- A) Following the killing of his adopted brother, P went to the place where it happened and killed S whom he found there.
 - B) X kills Y who attempted to rape X's wife.
 - C) P severely maltreats S, a septuagenarian, prompting the latter to kill him.
 - D) M killed R who slandered his wife.

SUGGESTED ANSWER: A.

69. Deeply enraged by his wife's infidelity, the husband shot and killed her lover. The husband subsequently surrendered to the police. How will the court appreciate the mitigating circumstances of (i) passion or obfuscation, (ii) vindication of a grave offense, and (iii) voluntary surrender that the husband invoked and proved? (2011 Bar Question)
- A) It will appreciate passion or obfuscation and voluntary surrender as one mitigating circumstance and vindication of a grave offense as another.
 - B) It will appreciate all three mitigating circumstances separately.
 - C) It will appreciate the three mitigating circumstances only as one.
 - D) It will appreciate passion or obfuscation and vindication of a grave offense as just one mitigating circumstance and voluntary surrender as another.

SUGGESTED ANSWER: D.

70. Without meaning anything, Z happened to stare into the eye of one of four men hanging out by a store which he passed. Taking offense, the four mauled and robbed him of his wages. Z went home, took a knife, and stabbed one of his attackers to death. Charged with murder, Z may raise the mitigating circumstance of: (2011 Bar Question)
- A) *praeter intentionem*.
 - B) incomplete self-defense preceded by undue provocation.
 - C) passion or obfuscation.
 - D) complete self-defense.

SUGGESTED ANSWER: C.

71. After properly waiving his Miranda rights, the offender led the police to where he buried the gun he used in shooting the victim. How does this affect his liability? (2011 Bar Question)
- A) This serves as an analogous mitigating circumstance of voluntary surrender.
 - B) It has no effect at all since the law provides none.
 - C) He is considered to have confessed to murder.
 - D) This serves as aggravating circumstance of concealment of weapon.

SUGGESTED ANSWER: A.

d. Aggravating circumstances

72. Which of the following is not a qualifying aggravating circumstance? (2014 Bar Question)
- A) treachery
 - B) evident premeditation
 - C) dwelling
 - D) cruelty

SUGGESTED ANSWER: C

73. During trial for theft in 2014, the prosecution managed to show that accused AA has also been convicted by final judgment for robbery in 2003, but she eluded capture. A subsequent verification showed that AA had several convictions, to wit:

- (1) In 1998, she was convicted of estafa;
- (2) In 2002, she was convicted of theft;
- (3) In 2004, she was convicted of frustrated homicide;

The judge trying the theft case in 2014 is about to convict AA. What circumstances affecting the liability or penalty may the judge appreciate against AA? (2014 Bar Question)

SUGGESTED ANSWER:

The judge may appreciate the aggravating circumstance of recidivism as all the are present. AA is on trial for the crime of theft. He has already been convicted by final judgment of robbery, and both robbery and theft are embraced in the same title of the RPC. Considering he is about to be convicted of the crime of theft for which he is on trial, AA is, therefore, a recidivist.

That more than 10 years has lapsed from the time he was convicted by final judgment of robbery in 2003 to his trial for the crime of theft in 2014 is of no moment because recidivism does not prescribed.

74. FF and his two (2) sons positioned themselves outside the house of the victim. The two (2) sons stood by the stairs in front of the house, while the father waited at the back. The victim jumped out of the window and was met by FF who instantly hacked him. The two (2) sons joined hacking the victim to death. They voluntarily surrendered to the police. How will the attendant circumstances be properly appreciated? (2012 Bar Question)
- A) Treachery and abuse of superior strength qualify the killing to murder.
 - B) Only treachery qualifies the killing to murder because abuse of superior strength is absorbed by treachery.
 - C) Treachery is the qualifying aggravating circumstance, while abuse of superior strength is treated as a generic aggravating circumstance.
 - D) The qualifying circumstance of treachery or abuse of superior strength can be offset by the mitigating circumstance of voluntary surrender.

SUGGESTED ANSWER:

B. Abuse of superior strength is an aggravating circumstance if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength. When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.

75. Which of the following circumstances may be taken into account for the purpose of increasing the penalty to be imposed upon the convict? (2012 Bar Question)

- A) Aggravating circumstances which in themselves constitute a crime especially punishable by law.
- B) Aggravating circumstances which are inherent in the crime to such a degree that they must of necessity accompany the crime.
- C) Aggravating circumstances which arise from the moral attributes of the offender.
- D) Aggravating circumstances which are included by the law in defining a crime.

SUGGESTED ANSWER:

C. Aggravating which arise from the moral attributes of the offender shall only serve to aggravate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

76. Arthur, Ben, and Cesar quarreled with Glen while they were at the latter's house. Enraged, Arthur repeatedly stabbed Glen while Ben and Cesar pinned his arms. What aggravating circumstance if any attended the killing of Glen? (2011 Bar Question)

- A) Evident premeditation
- B) None
- C) Abuse of superior strength
- D) Treachery

SUGGESTED ANSWER: C.

77. Ana visited her daughter Belen who worked as Caloy's housemaid. Caloy was not at home but Debbie, a casual visitor in the house, verbally maligned Belen in Ana's presence. Irked, Ana assaulted Debbie. Under the circumstances, dwelling is NOT regarded as aggravating because: (2011 Bar Question)

- A) Dwelling did nothing to provoke Ana into assaulting Debbie.
- B) Caloy, the owner of the house, was not present.
- C) Debbie is not a dweller of the house.
- D) Belen, whom Debbie maligned, also dwells in the house.

SUGGESTED ANSWER: C.

78. The aggravating circumstance of uninhabited place is aggravating in murder committed: (2011 Bar Question)

- A) on a banca far out at sea.
- B) in a house located in cul de sac.
- C) in a dark alley in Tondo.
- D) in a partly occupied condominium building.

SUGGESTED ANSWER: A.

79. W allowed a man to have sex with her thinking that he was her husband. After realizing that the man was not her husband, W stabbed him to death. Under the circumstances, the mitigating circumstance in attendance constitutes: (2011 Bar Question)
- A) defense of honor.
 - B) Immediate vindication of a grave offense.
 - C) passion or obfuscation.
 - D) self-defense.

SUGGESTED ANSWER: B.

80. Wenceslao and Loretta were staying in the same boarding house, occupying different rooms. One late evening, when everyone in the house was asleep, Wenceslao entered Loretta's room with the use of a picklock. Then, with force and violence, Wenceslao ravished Loretta. After he had satisfied his lust, Wenceslao stabbed Loretta to death and, before leaving the room, took her jewelry.

Discuss the applicability of the relevant aggravating circumstances of dwelling, nocturnity and the use of the picklock to enter the room of the victim. (2009 Bar Question)

SUGGESTED ANSWER:

Dwelling is aggravating because the crimes were committed in Loretta's room which in law, is considered as her dwelling. It is well settled that "dwelling" includes a room in a boarding house being occupied by the offended party where she enjoys privacy, peace of mind and sanctity of an abode.

Nocturnity or nighttime is also aggravating because pursuant to the objective test, although nighttime was not purposely or especially sought for by Wenceslao, it was obviously taken advantage of by him in committing the other crimes.

The use of a picklock to enter the room of the victim is not an aggravating circumstance under Art. 14 of the Code as the same is punished as a crime by itself, where the offender has no lawful cause for possessing it. The use of picklocks is equivalent to force upon things in robbery with force upon things.

81. **TRUE or FALSE.** Answer **TRUE** if the statement is true, or **FALSE** if the statement is false. Explain your answer in not more than two (2) sentences.

The use of an unlicensed firearm in homicide is considered a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance. (2009 Bar Question)

SUGGESTED ANSWER:

False. Offsetting may not take place because the use of an unlicensed firearm may only be considered as an aggravating circumstance when it is inherent in the commission of the crime under Section 29 of R.A. No. 10591, otherwise known as the "Comprehensive Firearms and Ammunition Act." Besides, it is not one of the generic aggravating circumstances under Article 14 of the Revised Penal Code.

e. Alternative circumstances

82. The alternative circumstance of relationship shall **NOT** be considered between: (2011 Bar Question)
- A) mother-in-law and daughter in law.
 - B) adopted son and legitimate natural daughter.
 - C) aunt and nephew.
 - D) stepfather and stepson.

SUGGESTED ANSWER: C.

83. A qualifying aggravating circumstance: (2011 Bar Question)
- A) changes the description and the nature of the offense.
 - B) increases the penalty to its next degree but absorbs all the other aggravating circumstances.
 - C) raises the penalty by two periods higher.
 - D) is one which applies only in conjunction with another aggravating circumstance.

SUGGESTED ANSWER: A.

f. Absolutory causes

84. The wife of AAA predeceased his mother-in-law. AAA was accused of defrauding his mother-in-law under a criminal information for estafa, but the actual recital of facts of the offense charged therein, if proven, would constitute not only the crime of estafa, but also falsification of public document as a necessary means for committing estafa. AAA invokes the absolutory cause of relationship by affinity. Which statement is most accurate? (2012 Bar Question)
- A) The relationship by affinity created between AAA and the blood relatives of his wife is dissolved by the death of his wife and the absolutory cause of relationship by affinity is therefore no longer available to AAA.
 - B) The death of spouse does not sever the relationship by affinity which is an absolutory cause available to AAA for estafa through falsification of public document.
 - C) If AAA commits in a public document the act of falsification as a necessary means to commit estafa, the relationship by affinity still subsists as an absolutory cause for estafa which should be considered separately from the liability for falsification of public document because there is no specific penalty prescribed for the complex crime of estafa through falsification of public document.
 - D) Considering that under the given situation, the two (2) crimes of estafa and falsification of public document are not separate crimes but component crimes of the single complex crime of estafa and falsification of public document, the absolutory cause of relationship by affinity is not available to AAA.

SUGGESTED ANSWER: D.

85. X and his step-father have a long- standing enmity. One day, irked by an argument with his step-father, X smashed the windshield of his step-father's brand new Audi sports car. X is liable for: (2011 Bar Question)
- A) malicious mischief.
 - B) malicious mischief with the alternative mitigating circumstance of relationship.
 - C) malicious mischief with the alternative aggravating circumstance of relationship.
 - D) the civil damage he caused.

SUGGESTED ANSWER: A.

3. Persons liable and degree of participation

a. Principals, accomplices, and accessories

86. Nel learned that Elgar, the owner of the biggest house in the place, would be out of town for three days with no one left to watch the house. He called his friends Ben, Ardo and Gorio and they planned to take the valuables in the house while Elgar was away. Nel and Ben would go inside the house, Ardo would serve as the lookout, while Gorio would stay in the getaway car. When Elgar

left, they carried out their plan to the letter. Nel and Ben went inside the house through the backdoor which was left unlocked. None of the rooms and drawers inside were locked. They took the money, jewelry and other valuables therefrom and immediately left using the getaway car.

After driving for about one kilometer, Nel realized he left his bag and wallet with IDs in the house and so he instructed Gorio to drive back to the house. Nel just went in thinking that the house was still empty. But to his surprise, Nel found Fermin seated on a bench with Nel's bag and wallet beside him and appeared to be texting using his smart phone. Nel took a golf club near him and hit Fermin with it. Fermin shouted for help, but Nel kept hitting him until he stopped making noise. The noise alerted the neighbor who called the police. Nel, Ben, Ardo and Gorio were caught. Fermin died. What is the criminal liability of Nel, Ben, Ardo and Gorio? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

Nel, Ben, Ardo and Gordo are criminally liable as principals for the crime of Theft. They conspired to take Elgar's personal properties without his knowledge, with intent to gain, and without violence against or intimidation of persons or force upon things (Art. 308, RPC)

The entry of Nel and Ben through an unlocked backdoor and the taking of valuables, make them liable as principals by direct participation, while Ardo and Gorio are principals by indispensable cooperation, by participating as a lookout and driver of a getaway car, respectively (Art. 17, RPC).

Nel, however, is also liable for the separate crime of Homicide for the death of Fermin, as the killing was a separate act and not a necessary means for committing Theft (Art. 48, RPC).

87. *Mr. Red* was drinking with his buddies, *Mr. White* and *Mr. Blue* when he saw *Mr. Green* with his former girlfriend, *Ms. Yellow*. Already drunk, *Mr. Red* declared in a loud voice that if he could not have *Ms. Yellow*, no one can. He then proceeded to the men's room but told *Mr. White* and *Mr. Blue* to take care of *Mr. Green*. *Mr. Blue* and *Mr. White* asked *Mr. Red* what he meant but *Mr. Red* simply said, "You already know what I want," and then left. *Mr. Blue* and *Mr. White* proceeded to kill *Mr. Green* and hurt *Ms. Yellow*. (2014 Bar Question)

- A) What, if any, are the respective liabilities of *Mr. Red*, *Mr. White* and *Mr. Blue* for the death of *Mr. Green*?
- B) What, if any, are the respective liabilities of *Mr. Red*, *Mr. White* and *Mr. Blue* for the injuries of *Ms. Yellow*?

SUGGESTED ANSWER:

- A) *Mr. White* and *Mr. Blue* are liable for the death of *Mr. Green* as principals by direct participation for directly taking part in the killing of the victim.

Mr. Red is not liable as a principal by inducement because his statement was not made directly with the intent of procuring the commission of the crime. Likewise, there is no showing that he exercised moral ascendancy or influence over *Mr. White* and *Mr. Blue*.

- B) *Mr. White* and *Mr. Blue* are liable as principals by direct participation for the crime of physical injuries for hurting *Ms. Yellow*. Their liability would depend on the extent of the physical injuries, while *Mr. Red* has no criminal liability because he did not participate in the act of hurting *Ms. Yellow*.

88. *A* was bitten by a dog owned by a neighbor. The following day, angered by the incident, *A* took the dog without the knowledge of the owner, had it butchered and cooked the meat. He then

invited his friends to partake of the dish with his friends who knew fully well that the dog was taken without the knowledge of the owner. What are the friends of A liable for? (2014 Bar Question)

- A) Theft
- B) Malicious mischief
- C) Accessories
- D) Obstruction of Justice

SUGGESTED ANSWER: C.

89. Modesto and Abelardo are brothers. Sometime in August, 1998 while Abelardo was in his office, Modesto, together with two other men in police uniform, came with two heavy bags. Modesto asked Abelardo to keep the two bags in his vault until he comes back to get them. When Abelardo later examined the two bags, he saw bundles of money that, in his rough count, could not be less than P5 Million. He kept the money inside the vault and soon he heard the news that a gang that included Modesto had been engaged in bank robberies. Abelardo, unsure of what to do under the circumstances, kept quiet about the two bags in his vault. Soon after, the police captured, and secured a confession from, Modesto who admitted that their loot had been deposited with Abelardo.

What is Abelardo's liability? (2013 Bar Question)

SUGGESTED ANSWER:

Abelardo is not criminally liable as an accessory since he does not have knowledge of the commission of the crime. Mere suspicion that the crime has been committed is not sufficient.

Also, even if Abelardo can be considered as an accessory, he is still not liable as he is the brother of Modesto.

90. AA knowingly and willfully induced BB to swear falsely. BB testified as told in a formal hearing of an administrative case under circumstances rendering him guilty of perjury. Is AA criminally liable? (2012 Bar Question)
- A) AA is not criminally liable because his act constitutes subornation of perjury which is not expressly penalized in the Revised Penal Code.
 - B) AA is not criminally liable because he was not the one who gave false testimony in the administrative case.
 - C) AA is not criminally liable because the witness suborned testified in an administrative case only.
 - D) AA is criminally liable for perjury as principal by inducement with BB as the principal by direct participation.

SUGGESTED ANSWER: A.

91. Who is an accomplice? (2012 Bar Question)

SUGGESTED ANSWER:

An accomplice is a person who, not being a principal, cooperate in the execution of the offense by previous or simultaneous acts (Article 18).

92. Distinguish an accomplice from a conspirator as to their knowledge of the criminal design of the principal, their participation, the penalty to be imposed in relation to the penalty for the principal,

and the requisites/elements to be established by the prosecution in order to hold them criminally responsible for their respective roles in the commission of the crime. (2012 Bar Question)

SUGGESTED ANSWER:

Accomplices and conspirators may be distinguished as follows: the former know of the criminal design after being told by the conspirators, while the latter know because they themselves have decided; the former are mere instruments who perform acts which are not essential to the crime; while the latter are authors of the crime; the penalty of the former is one degree lower than that of a principal, while the penalty of the latter is the same as the principal, except in cases where the law specifically prescribes a penalty therefor.

93. He is an accomplice who: (2011 Bar Question)

- A) agreed to serve as a lookout after his companions decided to murder the victim.
- B) watched quietly as the murderer stabbed his victim.
- C) helped the murderer find the victim who was hiding to avoid detection.
- D) provided no help, when he can, to save the victim from dying.

SUGGESTED ANSWER: C.

94. Zeno and Primo asked Bert to give them a sketch of the location of Andy's house since they wanted to kill him. Bert agreed and drew them the sketch. Zeno and Primo drove to the place and killed Andy. What crime did Bert commit? (2011 Bar Question)

- A) Accomplice to murder, since his cooperation was minimal.
- B) Accessory to murder, since his map facilitated the escape of the two.
- C) None, since he took no step to take part in executing the crime.
- D) Principal to murder, since he acted in conspiracy with Zeno and Primo.

SUGGESTED ANSWER: A

95. Ponciano borrowed Ruben's gun, saying that he would use it to kill Freddie. Because Ruben also resented Freddie, he readily lent his gun, but told Ponciano: "*O, pagkabaril mo kay Freddie, isauli mo kaagad, ha.*" Later, Ponciano killed Freddie, but used a knife because he did not want Freddie's neighbors to hear the gunshot.

- A) What, if any, is the liability of Ruben? Explain. (2009 Bar Question)
- B) Would your answer be the same if, instead of Freddie, it was Manuel, a relative of Ruben, who was killed by Ponciano using Ruben's gun? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

- A) Ruben has no criminal liability because the gun he lent to Ponciano was not used in the killing of Freddie. He neither participated in the planning of killing Freddie nor cooperated in the execution thereof. (Art. 18, RPC).
- B) No, in such case Ruben will no longer be liable as he lent his gun purposely for the killing of Freddie only, not for any other killing. As held, where the owner of the gun knew it would be used to kill a particular person, and the offender used it to kill another, the owner of the gun is not an accomplice as to the killing of the other person. Thus, only Ponciano will answer for the crime against Manuel.

96. Distinguish between an accomplice and a conspirator. (2007 Bar Question)

SUGGESTED ANSWER:

The distinction between an accomplice and a conspirator are:

1. An accomplice incurs criminal liability by merely cooperating in the execution of the crime without participating as a principal, by prior or simultaneous acts; whereas a conspirator participates in the commission of a crime as a co- principal.
2. An accomplice incurs criminal liability in an individual capacity by his act alone of cooperating in the execution of the crime; while a conspirator incurs criminal liability not only for his individual acts in the execution of the crime but also for the acts of the other participants in the commission of the crime collectively. The acts of the other participants in the execution of the crime are considered also as acts of a conspirator for purposes of collective criminal responsibility.
3. An accomplice participates in the execution of a crime when the criminal design or plan is already in place; whereas a conspirator participates in the adoption or making of the criminal design.
4. An accomplice is subjected to a penalty one degree lower than that of a principal; whereas a conspirator incurs the penalty of a principal.

b. Conspiracy and proposal**97. Differentiate wheel conspiracy and chain conspiracy. (2016 Bar Question)****SUGGESTED ANSWER:**

A “*wheel conspiracy*” occurs when there is a single person or group (the hub) dealing individually with two or more other persons or groups (the spokes), typically interacting with the hub rather than with another spoke; while a “*chain conspiracy*”, exists when there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer (*Estrada v. Sandiganbayan*, G.R. No. 148965, 26 February 2002).

- 98. Conspiracy to commit a felony is punishable only in cases where the law specifically provides a penalty. Which of the following combinations contain specific felonies under the Revised Penal Code? (2013 Bar Question)**
- A) Conspiracy to commit treason, conspiracy to commit rebellion, conspiracy to commit coup d'etat, conspiracy to commit misprision of treason.
 - B) Conspiracy to commit rebellion, conspiracy to commit coup d'etat, conspiracy to commit treason, conspiracy to commit sedition.
 - C) Conspiracy to commit rebellion or insurrection, conspiracy to commit sedition, conspiracy to commit illegal assemblies, conspiracy to commit treason.
 - D) Conspiracy to commit treason, conspiracy to commit sedition, conspiracy to commit terrorism.
 - E) None of the above.

SUGGESTED ANSWER:

B. Conspiracy to commit rebellion, conspiracy to commit coup d'etat, conspiracy to commit treason, conspiracy to commit sedition.

Conspiracy to commit coup d'etat or rebellion is punishable under Article 136 of the Revised Penal Code; conspiracy to commit treason under Article 115, and conspiracy to commit sedition under Article 141.

- 99. Proposal to commit felony is punishable only in cases in which the law specifically provides a penalty therefor. Under which of the following instances. are proponents NOT liable? (2012 Bar**

Question)

- A) Proposal to commit coup d'etat.
- B) Proposal to commit sedition.
- C) Proposal to commit rebellion.
- D) Proposal to commit treason.

SUGGESTED ANSWER:

B. Proposal to commit treason, rebellion or coup d'etat (Articles 115 and 136 of the Revised Penal Code) is punishable but proposal to commit sedition is not.

100. Conspiracy to commit felony is punishable only in cases in which the law specifically provides a penalty therefor. Under which of the following instances are the conspirators not liable? (2012 Bar Question)

- A) Conspiracy to commit arson.
- B) Conspiracy to commit terrorism.
- C) Conspiracy to commit child pornography.
- D) Conspiracy to commit trafficking in persons.

SUGGESTED ANSWER:

D. Conspirators are liable for conspiracy to commit arson (Section 7 of PD No. 1613), conspiracy to commit terrorism (Section 4 of RA No. 9372) and conspiracy to commit child pornography (Section [K] of RA No. 9775) because the law provides penalty thereof. However, conspirators are not liable for conspiracy to commit trafficking in persons because RA No. 9208 has not provided a penalty for it.

101.

- A) Define conspiracy. (2012 Bar Question)
- B) Distinguish by way of illustration conspiracy as a felony from conspiracy as a manner of incurring liability in relation to the crimes of rebellion and murder. (2012 Bar Question)

SUGGESTED ANSWER:

- A) When two or more persons come to an agreement concerning the commission of a felony and decide to commit it, there is conspiracy (Article 8, Revised Penal Code).
- B) Conspiracy as a felony is when the act itself is punished, such as if "A" and "B" conspired to overthrow the government, the act is punishable as conspiracy to commit rebellion is a felony. On the other hand, conspiracy as a manner of incurring liability is if "A" and "B" conspire to kill "X", and pursuant to conspiracy to commit homicide, "A" embraced "X" and then "B" stabbed and killed "X", the conspirators are equally liable for homicide. Conspirators are equally liable for homicide.

102. A proposal to commit a felony is punishable only when the law specifically provides a penalty for it as in the case of proposal to commit: (2011 Bar Question)

- A) rebellion.
- B) sedition.
- C) espionage.
- D) highway robbery.

SUGGESTED ANSWER: A.

103. Ricky was reviewing for the bar exam when the commander of a vigilante group came to him and showed him a list of five policemen to be liquidated by them for graft and corruption. He was further asked if any of them is innocent. After going over the list, Ricky pointed to two of the

policemen as honest. Later, the vigilante group liquidated the three other policemen in the list. The commander of the vigilante group reported the liquidation to Ricky. Is Ricky criminally liable? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

No, there was no conspiracy between Ricky and the Commander of the vigilantes. Mere vouching for the honesty of the two (2) policemen in the list cannot make him a co-conspirator for the killing. Ricky enjoys the presumption of innocence.

C. Penalties

1. Penalties that may be imposed and retroactive effect of penal laws

104. Define malfeasance, misfeasance and nonfeasance. (2016 Bar Question)

SUGGESTED ANSWER:

"Malfeasance" is the doing of an act which a person ought not to do at all.

"Misfeasance" is the improper doing of an act which a person might lawfully do.

"Nonfeasance" is the omission of an act which a person ought to do.

(Black's Dictionary, 6th Edition, West Publishing 1990)

105. Bruno was charged with homicide for killing the 75-year old owner of his rooming house. The prosecution proved that Bruno stabbed the owner causing his death; and that the killing happened at 10 in the evening in the house where the victim and Bruno lived. Bruno, on the other hand, successfully proved that he voluntarily surrendered to the authorities; that he pleaded guilty to the crime charged; that it was the victim who first attacked and did so without any provocation on his (Bruno's) part, but he prevailed because he managed to draw his knife with which he stabbed the victim. The penalty for homicide is reclusion temporal.

Assuming a judgment of conviction and after considering the attendant circumstances, what penalty should the judge impose? (2013 Bar Question)

SUGGESTED ANSWER:

The judge should impose an indeterminate sentence penalty of *arresto mayor* in any of its period to *prision correccional* in its medium period as maximum since Bruno is entitled to two privileged mitigating circumstances which lowered the prescribed penalty for homicide.

There is incomplete self-defense since there is no reasonable necessity of the means employed by Bruno when he used a knife to stab the weaponless victim. Moreover, there are no aggravating circumstances present, and at least two mitigating circumstances, namely, voluntary surrender and plea of guilt.

There are also no aggravating circumstances present, because it was not shown that Bruno disregarded the age of the victim or that nighttime facilitated the commission of the crime; moreover, dwelling cannot be appreciated because the crime happened in the house where both Bruno and the victim lived.

106. Because of the barbarity and hideousness of the acts committed by the suspects/respondents in cutting off their victims' appendages, stuffing their torsos, legs, body parts into oil drums and bullet-riddled vehicles and later on burying these oil drums, vehicles with the use of backhoes and other earth-moving machinery, the Commission on Human Rights (CHR) investigating team

recommended to the panel of public prosecutors that all respondents be charged with violation of the "Heinous Crimes Law." The prosecution panel agreed with the CHR. As the Chief Prosecutor tasked with approving the filing of the Information, how will you pass upon the recommendation? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

The CHR is correct in describing the crime committed as "heinous crimes", as defined in the preamble of the "Heinous Crimes Law" (Rep. Act No. 7659), despite the passage of Rep. Act No. 9346 prohibiting the imposition of the death penalty.

However, the "Heinous Crimes Law" does not define crimes; it is only an amendatory law increasing the penalty for the crime specified therein as heinous, to a maximum of death. Thus, the heinous crime committed shall be prosecuted under the penal law they are respectively defined and penalized.

2. Classification

107. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.

Life imprisonment is a penalty more favorable to the convict than *reclusion perpetua*. (2009 Bar Question)

SUGGESTED ANSWER:

False, Life imprisonment is unfavorable to a convict because the penalty is without a fixed duration, unlike the penalty of *reclusion perpetua* which has a duration of 20 years and 1 day to 40 years, with the eligibility for pardon after 20 years of imprisonment.

3. Duration and effects

108. Luis was sentenced to prison mayor and to pay a fine of P50,000, with subsidiary imprisonment in case of insolvency. Is the sentence correct? (2013 Bar Question)

(A) Yes, because Luis has no property to pay for the fine, so he must suffer the equivalent imprisonment provided by law in lieu of fine.

(B) No, because subsidiary imprisonment is applicable only when the penalty imposed is prison correccional or below.

(C) Yes, because the sentence says so.

(D) No, because the subsidiary imprisonment is applicable only when the penalty imposed is limited to a fine.

(E) None of the above.

SUGGESTED ANSWER:

B. When the principal imposed is higher than prison correccional, no subsidiary imprisonment shall be imposed upon the culprit (Article 39, RPC).

4. Application

a. RPC provisions

109. Santos was sentenced to suffer imprisonment in three separate judgments: 6 months and 1 day to 4 years for attempted homicide; 6 years and 1 day to 8 years for frustrated homicide; and 6 years and 1 day to 20 years for homicide. After his 20th year in the National Penitentiary, Santos filed a petition for habeas corpus claiming that he had fully served his sentence of 20 years and should therefore be immediately released from imprisonment.

Was Santos correct? (2013 Bar Question)

- A) Yes, because he served his sentences simultaneously so that his 20 years of incarceration was sufficient.**
- B) No, because multiple sentences are served successively not simultaneously.**
- C) No, only penalties other than imprisonment can be served simultaneously.**
- D) Yes, because after he has served the minimum of his penalties, he can now be released.**

SUGGESTED ANSWER:

B. No, because multiple sentences are served successively not simultaneously (Article 70, Revised Penal Code).

110. Who is a habitual delinquent? (2012 Bar Question)

SUGGESTED ANSWER:

A person shall be deemed to be habitual delinquent, if within a period of ten year from his release or last conviction of the crimes of serious or less serious physical injuries, *robo*, *hurto estafa* or falsification, he is found guilty of any of said crimes a third time or oftener (Article 62 of the RPC).

111. Distinguish habitual delinquency from recidivism as to the crimes committed, the period of time the crimes are committed, the number of crimes committed and their effects in relation to the penalty to be imposed on a convict. (2012 Bar Question)

SUGGESTED ANSWER:

As to the nature of the crime, in recidivism, the both the first and second crime are embraced in the same Title of the Revised Penal Code, while in habitual delinquency, the first, second and third crimes must be serious or less serious physical injuries, theft, robbery, estafa or falsification.

As to the time element, in the former, the accused was convicted of the first crime by final judgment at the time of trial of the second crime, while in the latter, the accused was convicted within 10 years after conviction or release of the first time, and within 10 years after conviction or release of the was found guilty for the third time or oftener.

As to the number of crimes, in the former, there must be at least two crimes committed; while in the latter, there must be at least three crimes committed.

As to its effect, the former is an ordinary aggravating circumstance, which triggers the application of the penalty for the second crime committed in its maximum period unless it is off-set by a mitigating

circumstance, while the presence of the latter triggers the imposition of additional penalty for the third or subsequent crime, and is not subject to the off-set rule.

b. Indeterminate Sentence Law (Act No. 4103)

112. Sammy Peke was convicted of a violation of R.A. No. 123456 for selling fake books. The law prescribes the penalty of *prision correccional*, a divisible penalty whose minimum period is six months and one day, to two years and four months; medium period is two years, four months and one day to four years and two months; and maximum period is four years, two months and one day to six years.

At arraignment, Sammy Peke pleads *guilty* to the crime charged. . (2017 Bar Question)

- A) Explain how the Indeterminate Sentence Law is applied in crimes punished by special laws.
- B) Supposing the trial judge imposes a straight penalty of imprisonment for one year. Is the penalty correct in the context of the Indeterminate Sentence Law? Explain your answer.

SUGGESTED ANSWER:

- A) Under the second part of the Indeterminate Sentence Law, in cases where the offense is punishable under special law, the maximum indeterminate penalty shall not exceed the maximum limit of the prescribed penalty, while the minimum penalty shall not be less than the minimum limit thereof. However, if the special law adopts the technical nomenclature of the penalties under the Revised Penal Code, the provision of the Revised Penal Code will apply.

Thus, Article 64 of the Revised Penal Code shall apply. The maximum penalty shall be fixed within the range of the proper imposable period after taking into consideration the modifying circumstance; while the minimum penalty shall be fixed within the range of the penalty next lower in degree than that prescribed by law.

In this case, the minimum indeterminate sentence must be taken from *arresto mayor* and the maximum from any of the periods of *prision correccional*.

- B) Yes, since Sammy Peke made a confession, the penalty of *prision correccional* prescribed for selling fake book shall be applied in its minimum period, which ranges from 6 months and 1 day to 2 years and 4 months. Thus, the court may opt to impose a penalty of 1 year of imprisonment within the range of the minimum period of *prision correccional*, as this is favorable to the accused based on the ruling of the Supreme Court in *People of the Philippines v. Nang Kay* (G.R. No. L-3565, 20 April 1951).

113. Explain the application of the Indeterminate Sentence Law (ISL). (2016 Bar Question)

SUGGESTED ANSWER:

The court must, instead of a single fixed penalty, except where the imposable penalty is one (1) year or less, determine two penalties, referred to in the Indeterminate Sentence Law as the “maximum” and “minimum” terms. The maximum shall, in view of the attending circumstances, be properly imposed under the rules of the Revised Penal Code, and the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law (special law), the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (*Section 1, ISL, Act No. 4103 as amended by Act No. 4225*)

114. Who among the following convicts are not entitled to the benefits of the Indeterminate Sentence

Law? (2012 Bar Question)

- A) Those who are recidivists.
- B) Those whose maximum term of imprisonment exceeds one (1) year.
- C) Those convicted of inciting to sedition.
- D) Those convicted of misprision of treason.

SUGGESTED ANSWER:

D. Recidivists, those convicted of inciting to sedition and those whose term of imprisonment exceed one year are entitled to the benefits of the indeterminate sentence (Section 2 of Act No. 4103); while those convicted of misprision of treason are not.

115. What is the nature of the circumstance which is involved in the imposition of the maximum term of the indeterminate sentence? (2012 Bar Question)

- A) qualifying circumstance;
- B) aggravating circumstance;
- C) modifying circumstance;
- D) analogous circumstance.

SUGGESTED ANSWER:

C. As can be seen in the plain terms Indeterminate Sentence Law (ISL), the legislature did not intend to limit “attending circumstances” as referring to Article 13 and 14 of the RPC. It clearly permits other circumstances outside of Articles 13 and 14 of the RPC to be treated as “attending circumstances,” such as quasi- recidivism and the circumstance involving the incremental penalty rule in estafa and theft.

116. AA was convicted of proposal to commit treason. Under Article 115 of the Revised Penal Code, proposal to commit treason shall be punished by prision correccional and a fine not exceeding P5,000.00. Is the Indeterminate Sentence Law applicable to AA? (2012 Bar Question)

- A) Yes. The Indeterminate Sentence Law is applicable to AA because the maximum of prision correccional exceeds one (1) year.
- B) Yes. The Indeterminate Sentence Law is applicable to AA because there is no showing that he is a habitual delinquent.
- C) No. The Indeterminate Sentence Law is not applicable to AA considering the penalty impossible for the offense of which he was convicted.
- D) No. The Indeterminate Sentence Law is not applicable considering the offense of which he was convicted.

SUGGESTED ANSWER:

D. The Indeterminate Sentence Law shall not apply to persons convicted of proposal to commit treason (Section 2 of the Indeterminate Sentence Law). Thus, AA is not entitled to the benefits of Indeterminate sentence because of the offense that he was convicted of.

117. How is the Indeterminate Sentence Law applied in imposing a sentence? (2012 Bar Question)**SUGGESTED ANSWER:**

If crime is punishable under the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. If the offense is punishable under a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be

less than the minimum term prescribed by the same (Section 1 of Act 4103).

- 118. An agonizing and protracted trial having come to a close, the judge found A guilty beyond reasonable doubt of homicide and imposed on him a straight penalty of SIX (6) YEARS and ONE (1) DAY of *prision mayor*.**

The public prosecutor objected to the sentence on the ground that the proper penalty should have been TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal*.

The defense counsel chimed in, contending that application of the Indeterminate Sentence Law should lead to the imposition of a straight penalty of SIX (6) MONTHS and ONE (1) DAY of *prision correccional* only. Who of the three is on the right track? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

None of the contention is correct because the Indeterminate Sentence Law for the crime of homicide, which is penalized by imprisonment exceeding one (1) year and is divisible, is covered by the indeterminate Sentence Law. The imposition of an indeterminate sentence is mandatory. Said law requires that the sentence in this case should reflect a minimum term for purposes of parole, and a maximum term fixing the limit of the imprisonment. Imposing a straight penalty is incorrect.

- 119. In a conviction for homicide, the trial court appreciated two (2) mitigating circumstances and one (1) aggravating circumstance. Homicide under Article 249 of the Revised Penal Code is punishable by *reclusion temporal*, an imprisonment term of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, determine the appropriate penalty to be imposed. Explain. (2009 Bar Question)**

SUGGESTED ANSWER:

Under the Indeterminate Sentence Law, the minimum of the sentence shall be anywhere within the range of 6 years and 1 day to 12 years imprisonment of *prision mayor*, and the maximum of the sentence shall be anywhere within the range of the minimum of Reclusion Temporal *i.e.*, not lower than 12 years and 1 day to not more than 14 years and 8 months.

- 120. Will your answer be the same if it is a conviction for illegal possession of drugs under R.A. 9165 (Dangerous Drugs Act of 2002), the prescribed penalty of which is also imprisonment for a term of twelve (12) years and one (1) day to twenty (20) years? Why or why not? (2009 Bar Question)**

SUGGESTED ANSWER:

No, my answer will not be the same because violations of R.A. No. 9165 are *mala prohibita* in which mitigating and aggravating circumstances are not appreciated and R.A. 9165 does not follow the technical nomenclature of penalties in the RPC. Thus, it cannot be divided into periods and the existence of mitigating and aggravating circumstances cannot be appreciated. Following the Indeterminate Sentence Law, the minimum indeterminate sentence is 12 Years and 1 day, and the maximum indeterminate sentence is 20 years.

- 121. Macky, a security guard, arrived home late one night after rendering overtime. He was shocked to see Joy, his wife, and Ken, his best friend, in the act of having sexual intercourse. Macky pulled out his service gun and shot and killed Ken.**

The court found that Ken died under exceptional circumstances and exonerated Macky of murder but sentenced him to *destierro*, conformably with Article 247 of the Revised Penal Code. The court also ordered Macky to pay indemnity to the heirs of the victim in the amount

of P50,000.00

While serving his sentenced, Macky entered the prohibited area and had a pot session with Ivy (Joy's sister). Is Macky entitled to an indeterminate sentence in case he is found guilty of the use of prohibited substances? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

No, Macky is not entitled to the benefit of the Indeterminate Sentence Law (Act 4103, as amended) for having evaded the sentence which banished or placed him on destierro. Sec. 2 of the said law expressly provides that the law shall not apply to those who shall have "evaded sentence".

c. Three-fold rule

122. Roman and Wendy are neighbors. On Valentine's Day, without prior notice, Roman visited Wendy at her condo to invite her to dinner, but Wendy turned him down and abruptly left, leaving her condo door unlocked. Roman attempted to follow but appeared to have second thoughts; he simply went back to Wendy's condo, let himself in, and waited for her return. On Wendy's arrival later that evening, Roman grabbed her from behind and, with a knife in hand, forced her to undress. Wendy had no choice but to comply. Roman then tied Wendy's hands to her bed and sexually assaulted her five (5) times that night.

Roman was charged with, and was convicted of five (5) counts of rape, but the judge did not impose the penalty of *reclusion perpetua* for each count. Instead, the judge sentenced Roman to 40 years of imprisonment on the basis of the three-fold rule.

Was the judge correct? (2013 Bar Question)

SUGGESTED ANSWER:

No. the three-fold rule only limits the service of the sentence and not in the imposition of the proper penalties. The court's imposition of penalties shall be based on all the five (5) crimes of rape for which the accused have been found guilty. Thus, the court erred in imposing life imprisonment. The penalties imposed should have been five 5 *reclusion perpetua*.

d. Subsidiary imprisonment

5. Graduation of penalties

6. Accessory penalties

7. Execution and service

a. RPC provisions

b. Probation Law (PD 968, as amended)

123. Andres was convicted of frustrated homicide and was sentenced to 6 years and 1 day as minimum, to 8 years of prision mayor as maximum. Andres appealed his conviction to the Court of Appeals, which convicted him of attempted homicide, and sentenced him to 6 months of arresto mayor as minimum, to 2 years of prision correccional as maximum.

Instead of appealing his conviction, Andres filed an application for probation with the Regional Trial Court. Is Andres qualified to avail of the benefits of the probation law? (2013 Bar Question)

- A) No, because when he filed a notice of appeal with the Court of Appeals, he waived his right under the probation law.
- B) Yes, because after his appeal, he qualified for probation as the sentence imposed on him was less than 6 years.
- C) Yes, because the probation law is meant to favor the accused.
- D) No, because his previous sentence of more than 6 years disqualified him so that he can no longer avail of probation as an alternative remedy.
- E) None of the above.

SUGGESTED ANSWER:

B. An accused convicted by the lower court of a non-probationable offense (frustrated homicide), but on appeal was found guilty of a probationable offense (attempted homicide), may apply for probation as expressly provided for by Section 4 of Presidential Decree No. 968, as amended by R.A. No. 10707.

124. Juancho owns a small piggery in Malolos, Bulacan. One Saturday afternoon, he discovered that all his pigs had died. Suspecting that one of his neighbors had poisoned the pigs, Juancho went home, took his rifle, went around the neighborhood, and fired his rifle in the air while shouting, "makakatikim sa akin ang lumason ng mga baboy ko." Barangay officials requested police assistance and Juancho was apprehended. Juancho was charged with and convicted of the crime of alarms and scandals. Juancho did not appeal his conviction.

Is Juancho qualified for probation? (2013 Bar Question)

- A) Yes, because the penalty for alarms and scandals is less than six (6) years.
- B) Yes, because Juancho did not appeal his conviction.
- C) No, because the crime of alarms and scandals carries with it a fine of P200.
- D) No, because the crime of alarms and scandals affects public order.
- E) None of the above.

SUGGESTED ANSWER:

B. Section 9 of P.D. 968, as amended by R.A. No. 10707 states that the benefits of probation shall not be extended to those: (a) sentenced to serve a maximum term of imprisonment of more than six (6) years; (b) convicted of any crime against the national security; (c) who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00); (d) who have been once on probation under the provisions of this Decree; and (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

Since Juancho does not fall under any of the disqualifications above and pursuant to Section 4, as amended by R.A. No. 10707, Juancho may apply for probation because he did not appeal his conviction.

125. The period of probation of the offender sentenced to a term of one (1) year shall not exceed: (2012 Bar Question)

- A) two (2) years;
- B) six (6) years;
- C) one (1) year;
- D) three (3) years.

SUGGESTED ANSWER:

A. Since the offender was sentenced to term of not more than one year, the period of probation shall not exceed two years (Section 14 PD No 968).

126. Under which of the following circumstances is probation not applicable? (2012 Bar Question)

- A) Probation is not applicable when the accused is sentenced to serve a maximum of six (6) years.
- B) Probation is not applicable when the accused has been convicted by final judgment of an offense punished by imprisonment of less than one (1) month and/or fine of less than P200.00.
- C) Probation is not applicable when accused is convicted of indirect assault.
- D) Probation is not applicable when accused is convicted of indirect bribery.

SUGGESTED ANSWER: C.

N.B.: it is respectfully submitted that due to the amendment of Section 9 of P.D. 968 by R.A. No. 10707, all of the offenders in the foregoing options may apply for probation.

127. Matt was found guilty of drug trafficking while his younger brother Jeff was found guilty of possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of Republic Act No. 9165.

Matt filed a petition for probation. Jeff appealed his conviction during the pendency of which he also filed a petition for probation.

The brothers' counsel argued that they being first time offenders, their petitions for probation should be granted. How would you resolve the brothers' petitions for probation? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

The brothers' petition for probation should both be denied.

Matt's petition for probation shall be denied because he was convicted for drug-trafficking. Section 24 of R.A. 9165 (Comprehensive Dangerous Drug Act of 2002) expressly provides, "Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended."

On the other hand, Jeff appealed his conviction and is therefore, precluded from applying for probation, pursuant to Section 4 of the Probation Law.

128. Joe was 17 years old when he committed homicide in 2005. The crime is punishable by *reclusion temporal*. After two years in hiding, he was arrested and appropriately charged in May 2007. Since Republic Act 9344 (Juvenile Justice and Welfare Act of 2006) was already in effect, Joe moved to avail of the process of intervention or diversion.

Suppose Joe was convicted of attempted murder with a special aggravating circumstance and was denied suspension of sentence, would he be eligible for probation under Presidential Decree (PD) 968, considering that the death penalty is imposable for the consummated felony? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Yes, he would be eligible for probation because the penalty imposable on Joe will not exceed 6 years of imprisonment.

Although the crime committed is punishable by death, the penalty can only be *reclusion perpetua* because RA 9344 forbids the imposition of the capital punishment upon offenders thereunder. Further, the crime committed is only attempted murder, the prescribed penalty for which is two degrees lower than *reclusion perpetua*; hence, *prision mayor*. Considering Joe was 17 years old when he committed the crime, the penalty of *prision mayor* should be lowered further by one degree as his minority is a privilege mitigating circumstance; hence, *prision correccional* or imprisonment within the range of six months and 1 day to 6 years is the imposable.

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

129. What is now the age of *doli incapax* in the Philippines? (2017 Bar Question)

SUGGESTED ANSWER:

The age of *doli incapax* in the Philippines is now 15 years of age or under. If the accused is 15 years of age or below the accused of such age is exempt from criminal liability since lack of discernment is conclusively presumed. (Section 6 of RA No. 9344).

130. Lito, a minor, was bullied by Brutus, his classmate. Having had enough, Lito got the key to the safe where his father kept his licensed pistol and took the weapon. Knowing that Brutus usually hung out at a nearby abandoned building after class, Lito went ahead and hid while waiting for Brutus. When Lito was convinced that Brutus was alone, he shot Brutus, who died on the spot. Lito then hid the gun in one of the empty containers. At the time of the shooting, Lito was fifteen years and one month old. What is Lito's criminal liability? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

Lito is criminally liable for murder qualified by the circumstance of treachery, or evident premeditation, as well as illegal possession of firearms.

Minority cannot be appreciated as an exempting circumstance. Although he was a minor, circumstances show that he acted with discernment. His minority, however, will be considered as a privileged mitigating circumstance, which will require the graduation of the penalty prescribed by law to one degree lower (Article 68). Thus, by reason of the privileged mitigating circumstance of his minority, his penalty of *reclusion perpetua* to death is lowered by one degree to *reclusion temporal*.

131. A, a young boy aged sixteen (16) at the time of the commission of the crime, was convicted when he was already seventeen (17) years of age for violation of Section 11 of R.A. 9165 or Illegal Possession of Dangerous Drugs for which the imposable penalty is life imprisonment and a fine. Section 98 of the same law provides that if the penalty imposed is life imprisonment to death on minor offenders, the penalty shall be *reclusion perpetua* to death. Under R.A. 9344, a minor offender is entitled to a privileged mitigating circumstance. (2014 Bar Question)

- A) May the privileged mitigating circumstance of minority be appreciated considering that the penalty imposed by law is life imprisonment and fine?
- B) Is the Indeterminate Sentence Law applicable considering that life imprisonment has no fixed duration and the Dangerous Drugs Law is *malum prohibitum*?
- C) If the penalty imposed is more than six (6) years and a notice of appeal was filed by A and given due course by the court, may A still file an application for probation?

D) If probation is not allowed by the court, how will A serve his sentence?

SUGGESTED ANSWER:

- A) Yes. under Section 98, RA 9165, if the offender is a minor, the penalty of life imprisonment shall be considered as *reclusion perpetua*. Even if *reclusion perpetua* is a single indivisible penalty, the privileged mitigating circumstance of minority would still be considered to lower the imposable penalty. The rule in Article 63, RPC that if the penalty prescribed by law is a single indivisible penalty, it shall be imposed regardless of mitigating and aggravating circumstance refers only to ordinary mitigating circumstances.
- B) Yes. The Indeterminate Sentence Law is applicable even to special penal laws. Since life imprisonment was converted into *reclusion perpetua*, which in turn was graduated to *reclusion temporal* because of the privileged mitigating circumstance of minority, the Indeterminate Sentence Law is applicable.
- C) Yes. A may still file an application for probation even if he filed a notice of appeal. Section 42, RA 9344 allows a child in conflict with the law to apply for probation with the court "any time." This means that he may do so even beyond the period for perfecting an appeal and even if the child has perfected the appeal from the judgment of conviction.
- D) If probation is not allowed by the court, the minor offender shall serve his sentence in agricultural camp or other training facility in accordance with Section 51 of RA 9344 as amended.

132. Michael was 17 years old when he was charged for violation of Sec. 5 of R.A. 9165 (illegal sale of prohibited drug). By the time he was convicted and sentenced, he was already 21 years old. The court sentenced him to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four(4) months of *reclusion temporal*, as maximum, and a fine of P500,000. Michael applied for probation but his application was denied because the probation law does not apply to drug offenders under R.A. 9165. Michael then sought the suspension of his sentence under R.A. 9344 or the Juvenile Justice and Youth Welfare Code.

Can Michael avail of the suspension of his sentence provided under this law? (2013 Bar Question)

SUGGESTED ANSWER:

No. The benefits of a suspended sentence can no longer apply to Michael since the suspension lasts only until he reaches the maximum age. However, he shall be entitled to the right of restoration, rehabilitation and reintegration in accordance with the law to give him the chance to live a normal life and become a productive member of the community. Accordingly, Michael may be confined in an agricultural camp and other training facility in accordance with Section 51 of Rep. Act No. 9344.

133. A, B and C, all seventeen (17) years of age, waited for nighttime to avoid detection and to facilitate the implementation of their plan to rob G. They entered the room of G through a window. Upon instruction of A, G opened her vault while B was poking a knife at her. Acting as lookout, C had already opened the main door of the house when the helper was awakened by the pleading of G to A and B to just take the money from the vault without harming her. When the helper shouted for help upon seeing G with A and B inside the room, B stabbed G and ran towards the door, leaving the house with C. A also left the house after taking the money of G from the vault. G was brought to the hospital where she died as a result of the wound inflicted by B. Under the given facts, are A, B and C exempt from criminal liability? If not, what is the proper charge against them or any of them? (2012 Bar Question)

- A) A, B and C, being under eighteen (18) years of age at the time of the commission of the offense, are exempt from criminal liability and should be merely subjected to intervention program for child in conflict with the law.

- B) There being no indication of having acted with discernment, A, B and C are exempt from criminal liability, subject to appropriate programs in consultation with the person having custody over the child in conflict with the law or the local social welfare and development officer.
- C) Considering the given facts which manifest discernment, A, B and C are not exempt from criminal liability and should be charged with the complex crime of robbery with homicide, subject to automatic suspension of sentence upon finding of guilt.
- D) Under the given facts, A, B and C are not exempt from criminal liability because they conspired to commit robbery for which they should be collectively charged as principals, and in addition, B should be separately charged with homicide for the death of G, subject to diversion programs for children over 15 and under 18 who acted with discernment.

SUGGESTED ANSWER:

C. Their minority cannot be used as an exempting circumstance as the facts and circumstances show that “A”, “B” and “C” committed the crime in a manner which indicates discernment.

“A”, “B” and “C” should be charged with robbery with homicide despite the fact that they merely plan to rob the victim and that only “B” stabbed “G”. Although the original plan may have been to simply rob the victim, the conspirators are equally liable as co- principals for all the planned or unanticipated consequences of their criminal design. Whenever the commission of the special complex crime of robbery with homicide is proven, all those who took part in the robbery are liable as principals even though they did not take part in the killing unless it appears that they endeavored to prevent the homicide.

134. What is the minimum age of criminal responsibility? (2012 Bar Question)

- A) fifteen (15) years old or under
- B) nine (9) years old or under
- C) above nine (9) years old and under fifteen (15) who acted with discernment
- D) above fifteen (15) years old and under eighteen (18) who acted with discernment

SUGGESTED ANSWER:

D. a child above fifteen (15) years but below eighteen (18) years of age shall be exempt from criminal liability unless he/she has acted with discernment (Section 6 of RA No. 9344).

135. A child over fifteen (15) years of age acted with discernment in the commission of murder. What is the duty of the court if he is already over eighteen (18) years of age at the time of the determination of his guilt for the offense charged? (2012 Bar Question)

- A) The court shall pronounce the judgment of conviction.
- B) The court shall place the child under suspended sentence for a specified period or until he reaches twenty-one (21) years of age.
- C) The court shall discharge the child for disposition measures.
- D) The court shall place the child on probation.

SUGGESTED ANSWER:

B. Section 38 of RA 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already 18 years of age or more at the time of the pronouncement of his/her guilt. Section 40 of the same law limits the said suspension of sentence until the child reaches that maximum age of 21.

136. A child in conflict with the law shall enjoy all the rights of a child until: (2011 Bar Question)

- A) he is found to have acted with discernment.

- B) his minority is offset by some aggravating circumstance.
- C) he is proved to be 18 years or older.
- D) he forfeits such rights by gross misconduct and immorality.

SUGGESTED ANSWER: C.

137. Joe was 17 years old when he committed homicide in 2005. The crime is punishable by *reclusion temporal*. After two years in hiding, he was arrested and appropriately charged in May 2007. Since Republic Act 9344 (Juvenile Justice and Welfare Act of 2006) was already in effect, Joe moved to avail of the process of intervention or diversion.

What is intervention or diversion? Is Joe entitled to intervention or diversion? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

The two terms are different. "Intervention" refers to activities designed to address issues that caused the child to commit an offense. This is for children: (a) 15 years old or less at the time of the commission of the crime; (b) or over 15 but below 18, but acted without discernment. On the other hand, "Diversion" refers to an alternative, child-appropriate process to determine the responsibility and treatment of a child in conflict with the law without resorting to formal court proceedings. This is for a child who is over 15 years but below 18 at the time of the commission of the crime and has acted with discernment.

Yes, Joe is entitled to diversion. Being only 12 years old at the time he committed the crime of homicide, he is treated as a child in conflict with the law under RA 9344.

138. Joe was 17 years old when he committed homicide in 2005. The crime is punishable by *reclusion temporal*. After two years in hiding, he was arrested and appropriately charged in May 2007. Since Republic Act 9344 (Juvenile Justice and Welfare Act of 2006) was already in effect, Joe moved to avail of the process of intervention or diversion.

Suppose Joe's motion for intervention or diversion was denied, and he was convicted two (2) years later when Joe was already 21 years old, should the judge apply the suspension of sentence? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, the judge should not suspend sentence anymore because Joe was already 21 years old. Suspension of sentence is availing under RA 9344 only until a child reaches the maximum age of twenty-one (21) years.

D. Extinction of criminal liability

139. A killed his wife and buried her in their backyard. He immediately went into hiding in the mountains.

Three years later, the bones of A's wife were discovered by X, the gardener. Since X had a standing warrant of arrest, he hid the bones in an old clay jar and kept quiet about it. After two years, Z, the caretaker, found the bones and reported the matter to the police.

After 15 years of hiding, A left the country but returned three years later to take care of his ailing sibling. Six years thereafter, he was charged with parricide but raised the defense of prescription.

Under the Revised Penal Code, when does the period of prescription of a crime commence to run? (2010 Bar Question)

SUGGESTED ANSWER:

Generally, the period of prescription of a crime commences to run from the date it was committed; but if the crime was committed clandestinely, the period of prescription of the crimes under the Revised Penal Code commence to run from the day on which the crime was discovered by the offended party, the authorities or their agents (Art. 91, RPC).

140. A killed his wife and buried her in their backyard. He immediately went into hiding in the mountains.

Three years later, the bones of A's wife were discovered by X, the gardener. Since X had a standing warrant of arrest, he hid the bones in an old clay jar and kept quiet about it. After two years, Z, the caretaker, found the bones and reported the matter to the police.

When is it interrupted? (2010 Bar Question)

SUGGESTED ANSWER:

The running of the prescriptive period of the crime is interrupted when any kind of investigative proceeding is instituted against the guilty person which may ultimately lead to his prosecution

141. A killed his wife and buried her in their backyard. He immediately went into hiding in the mountains.

Three years later, the bones of A's wife were discovered by X, the gardener. Since X had a standing warrant of arrest, he hid the bones in an old clay jar and kept quiet about it. After two years, Z, the caretaker, found the bones and reported the matter to the police.

After 15 years of hiding, A left the country but returned three years later to take care of his ailing sibling. Six years thereafter, he was charged with parricide but raised the defense of prescription. Is A's defense tenable? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, A's defense is untenable because parricide prescribes in twenty (20) years, and the running thereof only commenced five (5) years after, when it was discovered by Z and reported it to the police. Likewise, the running of the prescriptive period was suspended when A left the country, and the same started to run again when he returned to the Philippines, three (3) years after.

142. Baldo killed Conrad in a dark corner, at midnight, on January 2, 1960. Dominador witnessed the entire incident, but he was so scared to tell the authorities about it.

On January 2, 1970, Dominador, bothered by his conscience, reported the matter to the police. After investigation, the police finally arrested Baldo on January 6, 1980.

Charged in court, Baldo claims that the crime he committed had already prescribed.

Is Baldo's contention correct? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, Baldo is incorrect because the prescriptive period of twenty years, which only commenced when it was reported to the police on January 2, 1970, had not lapsed.

Under the discovery rule, which governs when the crime is not publicly committed, the prescriptive period of a crime commences to run only from the day on which the crime is discovered by the offended party, the authorities or their agents.

Thus, from discovery on January 2, 1970 until he was arrested in January 2, 1980, only the period of ten (10) years has lapsed.

143. Antero Makabayan was convicted of the crime of Rebellion. While serving sentence, he escaped from jail. Captured, he was charged with, and convicted of, Evasion of Service of Sentence. Thereafter, the President of the Philippines issued an amnesty proclamation for the offense of Rebellion. Antero applied for and was granted the benefit of the amnesty proclamation.

Antero then filed a petition for *habeas corpus*, praying for his immediate release from confinement. He claims that the amnesty extends to the offense of Evasion of Service of Sentence. As judge, will you grant the petition? Discuss fully. (2009 Bar Question)

SUGGESTED ANSWER:

Yes, I will grant the petition since amnesty had the effect of obliterating the commission of rebellion, and the crime of evasion of sentence would have lost its legal basis as there was no sentence to be evaded.

According to jurisprudence, amnesty obliterates the offense with which accused was charged, and that the person released by amnesty stands before the law precisely as though he had committed no offense (*Barrioquinto v. Fernandez*, G.R. No. L-1278, 21 January 1949).

144. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.

Amado, convicted of rape but granted an absolute pardon by the President, and one year thereafter, convicted of homicide, is a *recidivist*. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. Rape is a crime against persons and, like the crime of homicide, is embraced in the same Title of the Revised Penal Code under which Amado had been previously convicted by final judgment. The absolute pardon also did not erase the effect of the conviction.

E. Civil liability in criminal cases

145. The acquittal of an accused shall bar the civil action arising from the crime where the judgment of acquittal holds that _____. (2013 Bar Question)

- A) the acquittal is based on reasonable doubt
- B) the liability of the accused is not criminal but civil in nature
- C) the civil liability does not arise from or is not based on the criminal act for which the accused has been acquitted
- D) the accused did not commit the act imputed to him

SUGGESTED ANSWER: D

146. The death of the accused extinguishes his criminal liability but civil liability is not extinguished. (2013 Bar Question)

- A) when the death of the accused occurred before conviction
- B) when the death of the accused occurred after conviction and after he has perfected his appeal from conviction
- C) when the death of the accused occurred during the pendency of his appeal
- D) when the death of the accused occurred after final judgment
- E) None of the above.

SUGGESTED ANSWER:

D. Criminal liability is totally extinguished by the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment (Article 89 of the Revised Penal Code).

147. The penalty of perpetual or temporary special disqualification for the exercise of the right of suffrage does NOT deprive the offender of the right: (2011 Bar Question)

- A) to be elected to a public office.
- B) to vote in any popular election for a public office.
- C) to vote in a plebiscite.
- D) to hold any public office.

SUGGESTED ANSWER: C.

148. On her way home, Eva Marie saw an injured chow chow puppy behind a bush. Since the puppy did not have a collar, she brought it home so she could have it as a pet. Her son in fact begged Eva Marie to keep the puppy. The following day, Eva Marie bought a collar for the puppy and brought it to a veterinarian for treatment.

Did she incur civil liability? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Yes, she incurred civil liability when she committed theft because a person who is criminally liable is also civilly liable.

Finding any property of value, legally regarded as lost property would constitute theft if the finder failed to deliver the same to the local authorities or to its owner (Article 308, par. 1 of the Revised Penal Code). As a consequence, she will be civilly liable for the restitution or reparation for damage caused and indemnification for consequential damages.

149. What are the penalties that may be served simultaneously? (2007 Bar Question)

SUGGESTED ANSWER:

The penalties that may be served simultaneously are imprisonment/destierro and:

1. Perpetual absolute disqualification;
2. Perpetual special disqualification;
3. Temporary absolute disqualification;

4. Temporary special disqualification;
5. Suspension from public office, the right to vote and be voted for, and the right to follow a profession or calling;
6. Fine; and any principal penalty with its accessory penalties.

II. REVISED PENAL CODE – BOOK II

A. Crimes against National Security and Laws of Nations

150. The *Royal S.S. Maru*, a vessel registered in Panama, was 300 nautical miles from Aparri, Cagayan when its engines malfunctioned. The Captain ordered his men to drop anchor and repair the ship. While the officers and crew were asleep, armed men boarded the vessel and took away several crates containing valuable items and loaded them in their own motorboat. Before the band left, they planted an explosive which they detonated from a safe distance. The explosion damaged the hull of the ship, killed ten (10) crewmen, and injured fifteen (15) others.

What crime or crimes, if any, were committed? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

Qualified Piracy under Article 123 of the Revised Penal Code was committed because all the elements thereof were present, to wit:

(1) the vessel *Royal S.S. Maru* is on the high seas, or 300 nm away from Appari, Cagayan; (2) that the offenders are not members of its complement or passengers thereof; and (3) that the offenders seized equipment from the vessel, *i.e.*, the crates.

Moreover, the crime was qualified because: (1) the offenders seized the vessel by boarding; and (2) the crime of piracy was accompanied by murder and physical injuries.

151. What is the crime committed by a public officer who discloses to the representative of a foreign nation the contents of the articles, data or information of a confidential nature relative to the defense of the Philippine archipelago which he has in his possession by reason of the public office he holds? (2012 Bar Question)

- A) espionage;
- B) disloyalty;
- C) treason;
- D) violation of neutrality.

SUGGESTED ANSWER:

A. Espionage is committed by public officer, who is in possession, by reason of the public office he holds, of the articles, data, or information of a confidential nature relative to the defense of the Philippine Archipelago, discloses their contents to a representative of a foreign nation (Article 117 of the Revised Penal Code).

152. Can the crime of treason be committed only by a Filipino citizen? (2012 Bar Question)

- A) Yes. The offender in the crime of treason is a Filipino citizen only because the first element is that the offender owes allegiance to the Government of the Philippines.
- B) No. The offender in the crime of treason is either a Filipino citizen or a foreigner married to a Filipino citizen, whether residing in the Philippines or elsewhere, who adheres to the enemies of the Philippines, giving them aid or comfort.
- C) No. The offender in the crime of treason is either a Filipino citizen or an alien residing in the Philippines because while permanent allegiance is owed by the alien to his own country, he owes a temporary allegiance to the Philippines where he resides.
- D) Yes. It is not possible for an alien, whether residing in the Philippines or elsewhere, to commit

the crime of treason because he owes allegiance to his own country.

SUGGESTED ANSWER: C.

153. Because peace negotiations on the Spratlys situation had failed, the People's Republic of China declared war against the Philippines. Myra, a Filipina who lives with her Italian expatriate boyfriend, discovered e-mail correspondence between him and a certain General Tung Kat Su of China.

On March 12, 2010, Myra discovered that on even date, her boyfriend sent an e-mail to General Tung Kat Su, in which he agreed to provide vital information on the military defense of the Philippines to the Chinese government in exchange for P1 million and his safe return to Italy. Two weeks later, Myra decided to report the matter to the proper authorities.

Did Myra commit a crime? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Yes, Myra committed the crime of Misprision of Treason because she failed to report as soon as possible to the governor or provincial fiscal or to the mayor or fiscal of the City where she resides, the conspiracy between her Italian boyfriend and the Chinese General to commit treason against the Philippine Government.

Under Article 116 of the Revised Penal Code, every person who, owing allegiance to the Government, without being a foreigner, and having knowledge of any conspiracy against it, conceals or does not disclose and make known the same, as soon as possible to the governor or fiscal of the province, or the mayor or fiscal of the city in which he resides, commits misprision of treason.

154. The inter-island vessel M/V Viva Lines I, while cruising off Batanes, was forced to seek shelter at the harbor of Kaoshiung, Taiwan because of a strong typhoon. While anchored in said harbor, Max, Baldo and Bogart arrived in a speedboat, fired a bazooka at the bow of the vessel, boarded it and divested the passengers of their money and jewelry. A passenger of M/V Viva Lines I, Dodong took advantage of the confusion to settle an old grudge with another passenger, and killed him. After their apprehension, all four were charged with qualified piracy before a Philippine court.

Was the charge of qualified piracy against the three persons (Max, Baldo, and Bogart) who boarded the inter-island vessel correct? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

Yes, Max, Baldo and Bogart committed qualified piracy when, not being members or passengers of the M/V Viva Lines I, attacked said vessel in Philippines waters, and seized the passengers' personal belongings. Moreover, the crime was qualified when Max, Baldo and Bogart boarded the vessel and fired upon the ship, and divested the passengers of their money and jewelry (Art. 122, 123 of the Revised Penal Code as amended by R.A. 7659 and P.D. 532). The crime was further qualified when they fired upon the vessel and boarded it.

B. Crimes against the Fundamental Law of the State

155. In his homily, Fr. Chris loudly denounced the many extrajudicial killings committed by the men in uniform. Policeman Stone, then attending the mass, was peeved by the denunciations of Fr. Chris. He immediately approached the priest during the homily, openly displayed his firearm tucked in his waist, and menacingly uttered at the priest: *Father, may kalalagyan kayo kung hindi*

kayo tumigil. His brazenness terrified the priest, who cut short his homily then and there. The celebration of the mass was disrupted, and the congregation left the church in disgust over the actuations of Policeman Stone, a co-parishioner.

Policeman Stone was subsequently charged.

The Office of the Provincial Prosecutor is now about to resolve the case, and is mulling on what to charge Policeman Stone with.

May Policeman Stone be properly charged with either or both of the following crimes, or, if not, with what proper crime? (2017 Bar Question)

- A) *Interruption of religious worship* as defined and punished under Art. 132 of the Revised Penal Code; and/or
- B) *Offending the religious feelings* as defined and punished under Art. 133 of the *Revised Penal Code*.

Explain fully your answers.

SUGGESTED ANSWER:

- A) Policeman Stone may be charged with Interruption of religious worship because he is a public officer who disrupted the mass and caused the congregation to leave.

Under the Revised Penal Code, a public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion shall be liable for interruption of religious worship.

In this case, Policeman Stone, a public officer, disrupted the mass and caused the congregation to leave when he approached and threatened the priest during his homily.

- B) Policeman Stone may not be charged with the crime of offending religious feelings because his act of threatening the priest was not for the purpose of mocking or ridiculing the mass.

Jurisprudence provides that to be liable for offending religious feelings, the acts must be directed against religious practice or dogma or ritual to ridicule, mock or scoff at or attempt to damage an object of religious veneration [*People v. Baes*, (G.R. No. 46000 (1939))].

In this case, however, Policeman Stone threatened the priest because of the priest's statements during his homily, and not to mock or ridicule the ceremony. Hence, he is not guilty of offending religious feelings.

156. What is the criminal liability, if any, of a mayor who, without being authorized by law, compels prostitutes residing in his city to go to, and live in, another place against their will? (2012 Bar Question)

- A) The mayor is criminally liable for violation of domicile.
- B) The mayor is criminally liable for expulsion.
- C) The mayor is criminally liable for grave coercion.
- D) The mayor incurs no criminal liability because he merely wants to protect the youth against the indecency of the prostitutes.

SUGGESTED ANSWER: B.

157. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false.

Explain your answer in not more than two (2) sentences.

A policeman who, without a judicial order, enters a private house over the owner's opposition is guilty of trespass to dwelling. (2009 Bar Question)

SUGGESTED ANSWER:

False, the policeman committed Violation of Domicile under Article 128 of the Revised Penal Code because it is committed by public officer who enters a dwelling against the will of the owner thereof without authority from a judicial order.

- 158.** After due hearing on a petition for a writ of amparo founded on the acts of enforced disappearance and extralegal killing of the son of the complainant allegedly done by the respondent military officers, the court granted the petition. May the military officers be criminally charged in court with enforced disappearance and extralegal killing? Explain fully. **(2008 Bar Question)**

SUGGESTED ANSWER:

Yes, the respondent military officers may be criminally charged in court since "enforced disappearance" may constitute Arbitrary Detention under Article 124 of the Revised Penal Code. On the other hand, extralegal killing may either be considered as Murder under Article 248 or Homicide under Article 249 of the same Code.

C. Crimes against Public Order

- 159.** Bernardo was enraged by his conviction for *robbery* by Judge Samsonite despite insufficient evidence. Pending his appeal, Bernardo escaped in order to get even with Judge Samsonite. Bernardo learned that the Judge regularly slept in his mistress' house every weekend. Thus, he waited for the Judge to arrive on Saturday evening at the house of his mistress. It was about 8:00 p.m. when Bernardo entered the house of the mistress. He found the Judge and his mistress having coffee in the kitchen and engaging in small talk. Without warning, Bernardo stabbed the judge at least 10 times. The judge instantly died.

Prosecuted and tried, Bernardo was convicted of *direct assault with murder*. Rule with reasons whether or not the conviction for *direct assault with murder* was justified, and whether or not the trial court should appreciate the following aggravating circumstances against Bernardo, to wit: (1) disregard of rank and age of the victim, who was 68 years old; (2) dwelling; (3) nighttime; (4) cruelty; and (5) quasi-recidivism. (10%)

SUGGESTED ANSWER:

Bernardo was correctly convicted of direct assault with murder. Attacking Judge Samsonite by reason of past performance of duty of convicting Bernardo based on his assessment of the evidence constitutes qualified direct assault. He likewise committed the crime of murder when he committed the direct assault with the circumstance of treachery. In a single act of attacking Judge Samsonite, he committed two crimes, direct assault and murder. The two crimes may be complexed under Article 48 of the Revised Penal Code.

(1) The circumstance of disregard of rank shall be absorbed because it is inherent element of the crime of direct assault.

(2) The circumstance of disregard of age is not present in this case because Bernardo's attack was not for the purpose of offending or insulting Judge Samsonite's age. (*People v. Onabia*, G.R. No. 128288, Apr. 20, 1999).

(3) The circumstance of dwelling maybe appreciated as an aggravating circumstance because Judge Samsonite was attacked in the house of his mistress, where he regularly slept. In the aggravating circumstance of dwelling, the victim need not be the owner of the dwelling place, but as the owner's invited guest, he, the stranger, is sheltered by the same roof and protected by the same intimacy it affords. He is entitled to respect even for that short moment. (*People v. Balansi*, G.R. No. 77284, 19 July 1990).

(4) The circumstance nighttime shall not be appreciated because the presence of treachery in the instant case absorbs this aggravating circumstance (*People v. Pagador*, G.R. No. 140006-10, April 20, 2001).

(5) The circumstance of cruelty may not also be appreciated because the infliction of several stab wounds by the perpetrator was not shown to be for the purpose of exacerbating the pain and suffering of the victim. The number of wounds inflicted on the victim is not proof of cruelty (*Simangan v. People*, G.R. No. 157984, July 8, 2004).

(6) Bernardo is also not a quasi-recidivist because he committed the crime while the judgement of conviction is on appeal. A quasi-recidivist is someone who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same (*Article 160 of the Revised Penal Code*).

160. Dancio, a member of a drug syndicate, was a detention prisoner in the provincial jail of X Province. Brusco, another member of the syndicate, regularly visited Dancio. Edri, the guard in charge who had been receiving gifts from Brusco everytime he visited Dancio, became friendly with him and became relaxed in the inspection of his belongings during his jail visits. In one of Brusco's visits, he was able to smuggle in a pistol which Dancio used to disarm the guards and destroy the padlock of the main gate of the jail, enabling Dancio to escape. What crime(s) did Dancio, Brusco and Edri commit? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

Dancio committed the crime of direct assault under Article 148 of the Revised Penal Code for disarming the guards with the use of pistol while they are engaged in the performance of their duties.

Edri committed infidelity in the custody of prisoner or evasion through negligence under Article 224 of the RPC. As the guard in charge, Edri was negligent in relaxing the inspection of the Brusco's belongings during jail visits allowing him to smuggle a pistol to Dancio, which he subsequently used to escape. Edri also committed indirect bribery under Article 211 of the Revised Penal Code by accepting gifts from Brusco, who was part of the syndicate to which Dancio belonged.

Brusco committed delivery of prisoner from jail under Article 156 of the Revised Penal Code, as well as bribery under Article 210 of the same Code. Helping a person confined in jail to escape constitutes this crime, and by providing Dancio with a pistol, he helped him escape.

161. Miss Reyes, a lady professor, caught Mariano, one of her students, cheating during an examination. Aside from calling Mariano's attention, she confiscated his examination booklet and sent him out of the room, causing Mariano extreme embarrassment.

In class the following day, Mariano approached Miss Reyes and without any warning, slapped her on the face. Mariano would have inflicted grave injuries on Miss Reyes had not Dancio, another student, intervened. Mariano then turned his ire on Dancio and punched him repeatedly, causing him injuries.

What crime or crimes, if any, did Mariano commit? (2013 Bar Question)

SUGGESTED ANSWER:

Mariano is liable for two counts of direct assault for slapping Miss Reyes and repeatedly punching Dencio. Miss Reyes is a person in authority expressly mentioned in Article 152 of the Revised Penal Code, who was in the performance of her duties on the day of the commission of the assault. On the other hand, Dencio, became an agent of a person in authority when he came to the aid of a person in authority, Miss Reyes.

162. Amelia, a famous actress, bought the penthouse unit of a posh condominium building in Taguig City. Every night, Amelia would swim naked in the private, but open air, pool of her penthouse unit. It must have been obvious to Amelia that she could be seen from nearby buildings. In fact, some residents occupying the higher floors of the nearby residential buildings did indeed entertain themselves and their friends by watching her swim in the nude from their windows.

What crime did Amelia commit? (2013 Bar Question)

- A) Alarms and scandals because her act of swimming naked disturbs the public tranquility.
- B) Grave scandal because she committed highly scandalous acts that are offensive to decency or good customs.
- C) Immoral doctrines, obscene publications and exhibitions, and indecent shows under Article 201 of the Revised Penal Code, because her act of swimming naked is akin to an indecent live show.
- D) Amelia did not commit any crime because the swimming pool is located in her private home.

SUGGESTED ANSWER: D.

163. During a military uprising aimed at ousting the duly constituted authorities and taking over the government, General Tejero and his men forcibly took over the entire Rich Hotel which they used as their base. They used the rooms and other facilities of the hotel, ate all the available food they found, and detained some hotel guests.

What crime did General Tejero and his men commit? (2013 Bar Question)

- A) Rebellion complexed with serious illegal detention and estafa.
- B) Rebellion.
- C) Coup d'etat.
- D) Terrorism.
- E) None of the above.

SUGGESTED ANSWER: C.

164. A, B, and C organized a meeting in which the audience was incited to the commission of the crime of sedition. Some of the persons present at the meeting were carrying unlicensed firearms. What crime, if any, was committed by A, B and C, as well as those who were carrying unlicensed firearms and those who were merely present at the meeting? (2012 Bar Question)

- A) Inciting to sedition for A, B and C and illegal possession of firearms for those carrying unlicensed firearms.
- B) Inciting to sedition for A, B and C and those carrying unlicensed firearms.
- C) Illegal assembly for A, B, C and all those present at the meeting.
- D) Conspiracy to commit sedition for A, B, C and those present at the meeting.

SUGGESTED ANSWER: C.

165. B was convicted by final judgment of theft. While serving sentence for such offense, B was found in possession of an unlicensed firearm. Is B a quasi-recidivist? (2012 Bar Question)

- A) B is a quasi-recidivist because he was serving sentence when found in possession of an unlicensed firearm.
- B) B is not a quasi-recidivist because the offense for which he was serving sentence is different from the second offense.
- C) B is not a quasi-recidivist because the second offense is not a felony.
- D) B is not a quasi-recidivist because the second offense was committed while still serving for the first offense.

SUGGESTED ANSWER: C.

166. The guard was entrusted with the conveyance or custody of a detention prisoner who escaped through his negligence. What is the criminal liability of the escaping prisoner? (2012 Bar Question)

- A) The escaping prisoner does not incur criminal liability.
- B) The escaping prisoner is liable for evasion through negligence.
- C) The escaping prisoner is liable for conniving with or consenting to, evasion.
- D) The escaping prisoner is liable for evasion of service of sentence.

SUGGESTED ANSWER:

A. Evasion through negligence (Article 224 of the Revised Penal Code) and conniving with or consenting to evasion (Article 223) are crimes committed by public officer in charged with the conveyance or custody of the prisoner; either detention prisoner or prisoner by final judgment; hence, letters "b" and "c" are not the answer. Evasion of service of sentence (Article 157) can only be committed by a prisoner by final judgment, and not by mere detention prisoner (Curiano vs. CFI, G.R. No. L- 8104, April 15, 1955). Hence, "A" is the answer. The escapee does not incur criminal liability.

167. How is the crime of coup d'etat committed? (2012 Bar Question)

- A) By rising publicly and taking arms against the Government for the purpose of depriving the Chief Executive of any of his powers or prerogatives.
- B) When a person holding public employment undertakes a swift attack, accompanied by strategy or stealth, directed against public utilities or other facilities needed for the exercise and continued possession of power for the purpose of diminishing state power.
- C) When persons rise publicly and tumultuously in order to prevent by force the National Government from freely exercising its function.
- D) When persons circulate scurrilous libels against the Government which tend to instigate others to meet together or to stir up the people against the lawful authorities.

SUGGESTED ANSWER: B.

168. What is the proper charge against public officers or employees who, being in conspiracy with the rebels, failed to resist a rebellion by all means in their power, or shall continue to discharge the duties of their offices under the control of the rebels, or shall accept appointment to office under them? (2012 Bar Question)

- A) disloyalty of public officers or employees;
- B) rebellion;
- C) conspiracy to commit rebellion;
- D) dereliction of duty.

SUGGESTED ANSWER: B.

169. What is the proper charge against a person who, without taking arms or being in open hostility against the Government, shall incite others to deprive Congress of its legislative powers, by means of speeches or writings? (2012 Bar Question)

- A) inciting to sedition;
- B) inciting to rebellion or insurrection;
- C) crime against legislative body;
- D) unlawful use of means of publication or unlawful utterances.

SUGGESTED ANSWER: B.

170. What is the crime committed when a group of persons entered the municipal building rising publicly and taking up arms in pursuance of the movement to prevent exercise of governmental authority with respect to the residents of the municipality concerned for the purpose of effecting changes in the manner of governance and removing such locality under their control from allegiance to the laws of the Government? (2012 Bar Question)

- A) sedition;
- B) coup d'etat;
- C) insurrection;
- D) public disorder.

SUGGESTED ANSWER: B.

171. When is a disturbance of public order deemed to be tumultuous? (2012 Bar Question)

- A) The disturbance shall be deemed tumultuous if caused by more than three (3) persons who are armed or provided with means of violence.
- B) The disturbance shall be deemed tumultuous when a person causes a serious disturbance in a public place or disturbs public performance, function or gathering.
- C) The disturbance shall be deemed tumultuous when more than three (3) persons make any outcry tending to incite rebellion or sedition or shout subversive or provocative words to obtain any of the objectives of rebellion or sedition.
- D) The disturbance shall be deemed tumultuous when at least four (4) persons participate in a free-for-all fight assaulting each other in a confused and tumultuous manner.

SUGGESTED ANSWER: A.

172. What is the criminal liability, if any, of a police officer who, while Congress was in session, arrested a member thereof for committing a crime punishable by a penalty higher than prison mayor? (2012 Bar Question)

- A) The police officer is criminally liable for violation of parliamentary immunity because a member of Congress is privileged from arrest while Congress is in session.
- B) The police officer is criminally liable for disturbance of proceedings because the arrest was made while Congress was in session.
- C) The police officer incurs no criminal liability because the member of Congress has committed a crime punishable by a penalty higher than prison mayor.
- D) The police officer is criminally liable for violation of parliamentary immunity because parliamentary immunity guarantees a member of Congress complete freedom of expression without fear of being arrested while in regular or special session.

SUGGESTED ANSWER: C.

173. What is the proper charge against a group of four persons who, without public uprising, employ force to prevent the holding of any popular election? (2012 Bar Question)

- A) sedition;
- B) disturbance of public order;
- C) grave coercion;
- D) direct assault.

SUGGESTED ANSWER: D.

174. Which of the following circumstances may be appreciated as aggravating in the crime of treason? (2012 Bar Question)
- A) cruelty and ignominy;
 - B) evident premeditation;
 - C) superior strength;
 - D) treachery.

SUGGESTED ANSWER:

A. Cruelty may be appreciated in treason by deliberately augmenting the wrong by being unnecessarily cruel. However, treachery, abuse of superior strength and evident premeditation are by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty.

175. What is the criminal liability, if any, of AAA who substitutes for a prisoner serving sentence for homicide by taking his place in jail or penal establishment? (2012 Bar Question)
- (A) AAA is criminally liable for delivering prisoner from jail and for using fictitious name.
 - (B) AAA is criminally liable as an accessory of the crime of homicide by assisting in the escape or concealment of the principal of the crime.
 - (C) AAA is criminally liable for infidelity in the custody of prisoners.
 - (D) AAA is criminally liable for misrepresentation or concealing his true name.

SUGGESTED ANSWER:

A. A person, who shall help the escape of person confined in jail or penal establishment by means of violence, intimidation, or bribery or other means, is liable for delivering prisoner from jail (Article 156 of the Revised Penal Code). A person who shall publicly use a fictitious name for the purpose of concealing a crime commits using fictitious name (Article 178 of the Revised Penal Code).

176. AAA was convicted of theft by a Manila Court and sentenced to a straight penalty of one (1) year of prison correccional. After serving two (2) months of the sentence, he was granted conditional pardon by the Chief Executive. One of the conditions of the pardon was for him not to be found guilty of any crime punishable by the laws of the country. He subsequently committed robbery in Pasay City. Can the Manila Court require AAA to serve the unexpired portion of the original sentence? (2012 Bar Question)
- A) Yes. The Manila Court has the authority to recommit AAA to serve the unexpired portion of the original sentence in addition to the penalty for violation of conditional pardon.
 - B) No. The penalty remitted by the conditional pardon is less than six (6) years.
 - C) Yes. The penalty for violation of conditional pardon is the unexpired portion of the punishment in the original sentence.
 - D) No. AAA must first be found guilty of the subsequent offense before he can be prosecuted for violation of conditional pardon.

SUGGESTED ANSWER: D.

177. Which of the following statements constitute Inciting to Sedition? (2011 Bar Question)
- A) Utterance of statements irritating or obnoxious to the ears of the police officers.

- B) Speeches extolling communism and urging the people to hold a national strike and paralyze commerce and trade.
- C) Leaders of jeepney and bus associations shouting "Bukas tuloy ang welga hanggang sa magkagulo na!"
- D) Speeches calling for resignation of high government officials

SUGGESTED ANSWER: B.

178. To secure the release of his brother Willy, a detention prisoner, and his cousin Vincent, who is serving sentence for homicide, Chito asked the RTC Branch Clerk of Court to issue an Order which would allow the two prisoners to be brought out of jail. At first, the Clerk refused, but when Chito gave her P50,000.00, she consented.

She then prepared an Order requiring the appearance in court of Willy and Vincent, ostensibly as witnesses in a pending case. She forged the judge's signature, and delivered the Order to the jail warden who, in turn, allowed Willy and Vincent to go out of jail in the company of an armed escort, Edwin. Chito also gave Edwin P50,000.00 to leave the two inmates unguarded for three minutes and provide them with an opportunity to escape. Thus, Willy and Vincent were able to escape.

What crime or crimes, if any, had been committed by Chito, Willy, Vincent, the Branch Clerk of Court, Edwin, and the jail warden? Explain your answer. (2009 Bar Question)

SUGGESTED ANSWER:

The crimes committed by Chito, Willy, Vincent, the Branch Clerk of Court, Edwin, and the jail warden are as follows:

- a. Chito committed the crimes of (a) Delivery of Prisoners from Jail (Art. 156, RPC) for working out the escape of prisoners Willy and Vincent; (b) two counts of Corruption of Public Officials when he gave Php50,000.00 each to the Branch Clerk of Court and Edwin; Art. 212, RPC); and (c) Falsification of Public Documents, as a principal by inducement (Art. 172[1], RPC, when he caused the falsification of the court's Order by the Branch Clerk of Court.
- b. Willy committed the crime of Delivery of Prisoners from Jail (Art. 156, RPC) as a principal by indispensable participation if he was aware of the criminal plan of Chito to have them escape from prison and he did escape pursuant to such criminal plan; otherwise he would not be liable for said crime if he escaped pursuant to human instinct only.
- c. Vincent, being a prisoner serving sentence by final judgment, committed the crime of Evasion of Service of Sentence (Art. 157, RPC) for escaping during the term of his imprisonment.
- d. The Branch Clerk of Court committed the crimes of –
 - 1. Direct Bribery (Art. 210, RPC) for accepting the P50,000.00, in consideration of the Order she issued to enable the prisoners to get out of jail;
 - 2. Falsification of Public Document for forging the judge's signature on said Order (Art. 171, RPC);
 - 3. Delivery of Prisoners from Jail (Art. 156, RPC), as a co- principal of Chito by indispensable cooperation for making the false Order and forging the judge's signature thereon, to enable the prisoners to get out of jail;
 - 4. Evasion of Service of Sentence (Art. 157, RPC) as a co- principal of Vincent by indispensable cooperation for making the false Order that enable Vincent to evade service of his sentence;

- e. Edwin, the jail guard who escorted the prisoner in getting out of jail, committed the crimes of –
 1. Infidelity in the Custody of Prisoners, especially conniving with or consenting to Evasion for leaving unguarded the prisoners escorted by him and provide them an opportunity to escape (Art. 223, RPC);
 2. Direct Bribery for receiving the P50,000.00 as consideration for leaving the prisoners unguarded and allowing them the opportunity to escape (Art. 210, RPC).

The jail warden did not commit nor incur a crime there being no showing that he was aware of what his subordinates had done nor of any negligence on his part that would amount to infidelity in the custody of prisoners.

179. Rigoberto gate-crashed the 71st birthday party of Judge Lorenzo. Armed with a piece of wood commonly known as *dos por dos*, Rigoberto hit Judge Lorenzo on the back, causing the latter's hospitalization for 30 days. Upon investigation, it appeared that Rigoberto had a grudge against Judge Lorenzo who, two years earlier, had cited Rigoberto in contempt and ordered his imprisonment for three (3) days.

- A) Is Rigoberto guilty of Direct Assault? Why or why not? (2009 Bar Question)**
- B) Would your answer be the same if the reason for the attack was that when Judge Lorenzo was still a practicing lawyer ten years ago, he prosecuted Rigoberto and succeeded in sending him to jail for one year? Explain your answer. (2009 Bar Question)**

SUGGESTED ANSWER:

- A) No, Rigoberto is not guilty of Direct Assault because Judge Lorenzo has ceased to be a judge when he was attacked. He has retired (71 years old) from his position as a person in authority when he was attacked. Hence, the attack on him cannot be regarded as against a person in authority anymore.
- B) Yes, Rigoberto would still not be guilty of Direct Assault because a lawyer, who is deemed a person in authority, must have been assaulted when engaged in actual performance of his professional duties or on the occasion of such performance. In this case, however, Judge Lorenzo, who was still a lawyer then, was celebrating his birthday at the time when Rigoberto assaulted him. He was neither in the performance of his duties nor attacked on occasion thereof.

180. What are the different acts of inciting to sedition? (2007 Bar Question)

SUGGESTED ANSWER:

The different acts which constitute the crime of inciting to sedition are:

1. Inciting others through speeches, writings, banners and other media of representation to commit acts which constitutes sedition;
2. Uttering seditious words, speeches or circulating scurrilous libels against the Government of the Philippines or any of its duly constituted authorities, which tend to disturb or obstruct the performance of official functions, or which tend to incite others to cabal and meet for unlawful purposes;
3. Inciting through the same media of representation rebellious conspiracies or riots;
4. Stirring people to go against lawful authorities, or disturb the peace and public order of the community or of the Government; or
5. Knowingly concealing any of the aforesaid evil practices (Art. 142, Revised Penal Code).

D. Crimes against Public Interest

181. Erwin and Bea approached Mayor Abral and requested him to solemnize their marriage. Mayor Abral agreed. Erwin and Bea went to Mayor Abral's office on the day of the ceremony, but Mayor Abral was not there. When Erwin and Bea inquired where Mayor Abral was, his chief of staff Donato informed them that the Mayor was campaigning for the coming elections. Donato told them that the Mayor authorized him to solemnize the marriage and that Mayor Abral would just sign the documents when he arrived. Donato thereafter solemnized the marriage and later turned over the documents to Mayor Abral for his signature. In the marriage contract, it was stated that the marriage was solemnized by Mayor Abral. What crime(s) did Mayor Abral and Donato commit? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

Donato committed Usurpation of Official Functions under Article 177 of the Revised Penal Code because he performed the act of solemnizing a marriage which pertained to the mayor, without being lawfully entitled to do so.

Mayor Abral is liable for falsification of public document by a public officer under Article 171. Making an untruthful statement by stating in a marriage contract, a public document, that the marriage was solemnized him, is an act of falsification.

182. What is the criminal liability, if any, of a physician who issues a false medical certificate in connection with the practice of his profession? (2012 Bar Question)

- A) The physician is criminally liable for falsification of medical certificate.
- B) The physician is criminally liable if the false medical certificate is used in court.
- C) The physician incurs no criminal liability if the false medical certificate is not submitted to the court.
- D) The physician incurs no criminal liability if the false medical certificate does not cause prejudice or damage.

SUGGESTED ANSWER: A.

183. The baptism of A was solemnized by B, an ecclesiastical minister, in the absence of C, one of the godparents. Upon request of the mother of A, B caused the inclusion of the name of C in the baptismal certificate of A as one of the godparents and allowed a proxy for C during the baptismal ceremony. What is the criminal liability, if any, of the ecclesiastical minister? (2012 Bar Question)

- A) The ecclesiastical minister is criminally liable for falsification of baptismal certificate by causing it to appear that C participated in the baptismal ceremony when he did not in fact so participate.
- B) The ecclesiastical minister is not criminally liable because the insertion of the name of C in the baptismal certificate will not affect the civil status of A.
- C) The ecclesiastical minister is not criminally liable because he is not a public officer, employee or notary.
- D) The ecclesiastical minister is not criminally liable because he did not take advantage of his official position nor cause damage to a third party.

SUGGESTED ANSWER: B.

E. Crimes against Public Morals

F. Crimes committed by Public Officers

184. To aid in the rebuilding and revival of Tacloban City and the surrounding areas that had been devastated by the strongest typhoon to hit the country in decades, the Government and other sectors, including NGOs, banded together in the effort. Among the NGOs was Bangon Waray, Inc. (BaWI), headed by Mr. Jose Ma. Gulang, its President and CEO. BaWI operated mainly as a social amelioration and charitable institution. For its activities in the typhoon-stricken parts of Leyte Province, BaWI received funds from all sources, local and foreign, including substantial amounts from legislators, local government officials and the EU. After several months, complaints were heard about the very slow distribution of relief goods and needed social services by BaWI.

The COA reported the results of its audit to the effect that at least P10 Million worth of funds coming from public sources channeled to BaWI were not yet properly accounted for. The COA demanded reimbursement but BaWI did not respond.

Hence, Mr. Gulang was criminally charged in the Office of the Ombudsman with malversation of public funds as respectively defined and punished by Art. 217 and Art. 218 of the Revised Penal Code. He was also charged with violation of Sec. 3(e) of R.A. 3019 for causing undue injury to the Government.

In his defense, Mr. Gulang mainly contended that he could not be held liable under the various charges because he was not a public officer. (2017 Bar Question)

- A) Who is a public officer?
- B) Discuss whether the crimes charged against Mr. Gulang are proper. Explain your answer.

SUGGESTED ANSWER:

- A) A public officer is any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.
- B) Mr. Gulang, although a private person, may be charged with malversation and failure of accountable officer to render accounts because he was in made in charge of public funds. Malversation and failure to render accounts shall also apply to private individuals who, in any capacity whatever, have charge of any national, provincial or municipal funds, revenues or property.

Mr. Gulang may not be held liable for RA No. 3019 because it was not shown that he conspired with a public officer in committing the crime. As a general rule, a private individual can be held liable for violation of if he conspired with a public officer in committing this crime.

185. A typhoon destroyed the houses of many of the inhabitants of X Municipality. Thereafter, X Municipality operated a shelter assistance program whereby construction materials were provided to the calamity victims, and the beneficiaries provided the labor. The construction was partially done when the beneficiaries stopped helping with the construction for the reason that they needed to earn income to provide food for their families. When informed of the situation, Mayor Maawain approved the withdrawal of ten boxes of food from X Municipality's feeding program, which were given to the families of the beneficiaries of the shelter assistance program. The appropriations for the funds pertaining to the shelter assistance program and those for the feeding program were separate items on X Municipality's annual budget. (2015 Bar Question)

- A) What crime did Mayor Maawain commit? Explain.
- B) May Mayor Maawain invoke the defense of good faith and that he had no evil intent when he approved the transfer of the boxes of food from the feeding program to the shelter assistance program? Explain.

SUGGESTED ANSWER:

- A) Mayor Maawain committed the crime of Illegal use of public funds or property or Technical Malversation under Art. 220 of the RPC, because as an accountable public officer, he applied public funds and property under his administration, which were supposedly for the feeding program, to some other public use, *i.e.*, the beneficiaries of the shelter assistance program.
- B) No. Since the offense of Technical Malversation is *mala prohibita*, good faith is not a defense. The law punishes the mere act of diverting public property earmarked by law or ordinance for a particular purpose to another public purpose.

186. Filthy, a very rich businessman, convinced Loko, a clerk of court, to issue an order of release for Takas, Filthy's cousin, who was in jail for a drug charge. After receiving P500,000.00, Loko forged the signature of the judge on the order of release and accompanied Filthy to the detention center.

At the jail, Loko gave the guard P10,000.00 to open the gate and let Takas out. What crime or crimes did Filthy, Loko, and the guard commit? (2014 Bar Question)

SUGGESTED ANSWER:

Filthy committed the following crimes:

- (a) Delivery of prisoners from Jail, Article 156, RPC, because he assisted in the removal of Takas, a detention prisoner, from jail.
- (b) Corruption of Public Officials, Article 212, RPC, because he gave P500,000.00 to the clerk of court, under circumstances in which said public officer would be liable of direct bribery.
- (c) Falsification of Public Document, Article 172(1), RPC, as a principal by inducement because he gave the clerk of court P500,000.00 to induce him to forge the signature of the judge in the order of release.

Loko committed the following crimes:

- (a) Direct Bribery, Article 210, RPC, because he accepted P500,000.00 in consideration of the execution of an act which constitutes a crime, *i.e.*, forging the signature of the judge in the order of release that would enable Takas to get out of jail, in connection with the performance of his duty as a clerk of court.
- (b) Falsification of Public Document, Article 171, RPC, because he took advantage of his position as a clerk of court in forging the signature of the judge in the order of release.
- (c) Delivery of Prisoners from Jail, Article 156, RPC, because he assisted in the removal of Takas from jail by forging the signature of the judge in the in the falsified order of release.

The guard committed the following crimes:

- (a) Direct Bribery, Article 210, RPC, because in consideration of P10,000.00, he agreed to open the gate and let Takas out.
- (b) Infidelity in the Custody of Prisoners, Article 223, RPC, because as the custodian of Takas, connived or consented to his escape by opening the gate.

187. Frank borrowed P1,000,000 from his brother Eric. To pay the loan, Frank issued a post-dated

check to be presented for payment a month after the transaction. Two days before maturity, Frank called Eric telling him he had insufficient funds and requested that the deposit of the check be deferred. Nevertheless, Eric deposited the check and it was dishonored. When Frank failed to pay despite demand, Eric filed a complaint against him for violation of Batas Pambansa Blg. 22 (The Bouncing Checks Law).

Was the charge brought against Frank correct? (2013 Bar Question)

SUGGESTED ANSWER:

Yes, the charge of Violation of BP 22 is correct. Being *malum prohibitum*, it is committed by mere issuance of a worthless check, and the conditions relating to the issuance are irrelevant to the prosecution of the offender. Frank's request to defer the deposit of the check as it has insufficient funds will not militate against his prosecution for BP Blg. 22.

188. Judge Talim, upon complaint and application of the realty corporation Batmanson, Inc., issued a writ of preliminary injunction against Darjeeling Ventures, Inc., a competitor of Batmanson, Inc., without notice and hearing.

If you were counsel for Darjeeling Ventures, Inc., what criminal charge should you file against Judge Talim? (2013 Bar Question)

- A) Rendering a manifestly unjust judgment.
- B) Knowingly rendering an unjust interlocutory order.
- C) Causing undue injury through manifest partiality under R.A. No. 3019.
- D) Bribery.
- E) None of the above.

SUGGESTED ANSWER: B.

189. AA was appointed for a two-year term to serve the unexpired portion of a resigned public official. Despite being disqualified after the lapse of the two- year term, PA continued to exercise the duties and powers of the public office to which appointed. What is the criminal liability of AA? (2012 Bar Question)

- A) AA is criminally liable for malfeasance in office.
- B) AA is criminally liable for prolonging performance of duties and powers.
- C) AA is criminally liable for disobeying request for disqualification.
- D) AA incurs no criminal liability because there is no indication that he caused prejudice to anyone.

SUGGESTED ANSWER: B.

190. What crime is committed when a person assumes the performance of duties and powers of a public office or employment without first being sworn in? (2012 Bar Question)

- A) anticipation of duties of a public office;
- B) usurpation of authority;
- C) prohibited transaction;
- D) unlawful appointment.

SUGGESTED ANSWER: A.

191. What crime is committed by a public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service in order to evade the discharge of the duties of preventing, prosecuting or punishing the crime of treason? (2012 Bar Question)

- A) abandonment of office or position;

- B) qualified abandonment of office;
- C) misprision of treason;
- D) negligence in the prosecution of offense.

SUGGESTED ANSWER: B.

192. A jailer inflicted injury on the prisoner because of his personal grudge against the latter. The injury caused illness of the prisoner for more than thirty (30) days. What is the proper charge against the jailer? (2012 Bar Question)

- A) The jailer should be charged with maltreatment of prisoner and serious physical injuries.
- B) The jailer should be charged with serious physical injuries only.
- C) The jailer should be charged with complex crime of maltreatment of prisoner with serious physical injuries.
- D) The jailer should be charged with maltreatment of prisoner only.

SUGGESTED ANSWER: A.

193. What is the proper charge against a lawyer who reveals the secrets of his client learned by him in his professional capacity? (2012 Bar Question)

- A) The lawyer should be charged with revelation of secrets of private individual.
- B) The lawyer should be charged with betrayal of trust.
- C) The lawyer should be charged with unauthorized revelation of classified materials.
- D) The proper charge against the lawyer should be revealing secrets with abuse of office.

SUGGESTED ANSWER:

B. Betrayal of trust is committed by an attorney-at-law who, by any malicious breach of professional duty or of inexcusable negligence, shall reveal any of the secrets of his client learned by him in his professional capacity (Article 209 of the Revised Penal Code).

194. What crime is committed by a public officer who, having control of public funds or property by reason of the duties of his office and for which he is accountable, permits any other person through abandonment to take such public funds or property? (2012 Bar Question)

- A) The public officer commits malversation.
- B) The public officer commits technical malversation.
- C) The public officer commits the crime of failure of accountable or responsible officer to render accounts.
- D) The public officer commits the crime of failure to make delivery of public funds or property.

SUGGESTED ANSWER:

A. It is settled that a public officer is liable for malversation even if he does not use public property or funds under his custody for his personal benefit, if he allows another to take the funds, or through abandonment or negligence, allow such taking.

195. In malversation of public funds, the offender's return of the amount malversed has the following effect: (2011 Bar Question)

- A) It is exculpatory.
- B) It is inculpatory, an admission of the commission of the crime.
- C) The imposable penalty will depend on what was not returned.
- D) It is mitigating.

SUGGESTED ANSWER: D.

196. A public officer who immediately returns the bribe money handed over to him commits: (2011 Bar Question)

- A) no crime.
- B) attempted bribery.
- C) consummated bribery.
- D) frustrated bribery.

SUGGESTED ANSWER: A.

197. Direct bribery is a crime involving moral turpitude. From which of the following elements of direct bribery can moral turpitude be inferred? (2011 Bar Question)

- A) The offender receives a gift by himself or through another.
- B) The offender is a public officer.
- C) The offender takes a gift with a view to committing a crime in exchange.
- D) The act which the offender agrees to perform or which he executes is connected with his official duties.

SUGGESTED ANSWER: C.

198. May a judge be charged and prosecuted for the felony of qualified bribery? How about a public prosecutor? A police officer? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, a judge may not be charged of this felony because his official duty as a public officer is not law enforcement but the determination of cases already filed in court.

A public prosecutor may be prosecuted for qualified bribery should he refrain from prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any offer, promise, gift or present.

A police officer who refrains from arresting such offender for the same consideration above stated, may be prosecuted for this felony since he is a public officer entrusted with law enforcement.

199. What is the crime of qualified bribery? (2010 Bar Question)

SUGGESTED ANSWER:

Qualified robbery is a crime committed by a public officer who is entrusted with law enforcement who, in consideration of any offer, promise, gift or offer, refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death (Art. 211-A, Revised Penal Code).

200. Roger and Jessie, Municipal Mayor and Treasurer, respectively, of San Rafael, Leyte, caused the disbursement of public funds allocated for their local development programs for 2008. Records show that the amount of P2-million was purportedly used as financial assistance for a rice production livelihood project. Upon investigation however, it was found that Roger and Jessie falsified the disbursement vouchers and supporting documents in order to make it appear that qualified recipients who, in fact, are non-existent individuals, received the money.

Roger and Jessie are charged with malversation through falsification and violation of Section 3 (e) of R.A. 3019 for causing undue injury to the government. Discuss the propriety of the charges filed against Roger and Jessie. Explain. (2009 Bar Question)

SUGGESTED ANSWER:

The charge of complex crime of malversation through falsification is incorrect because the act of falsification was not a necessary means to malverse the money. The falsifications were committed to cover up or hide the malversation and therefore, should be separately treated from malversation.

Moreover, they should be charged of violation of section 3(e) of RA 3019 for the breach of public trust and undue injury cause to the Government.

- 201. Eman, a vagrant, found a bag containing identification cards and a diamond ring along Roxas Blvd. Knowing that it was not his, he went to a nearest police station to seek help in finding the owner of the bag. At the precinct PO1 Melvin attended to him. In the investigation Eman proposed to PO1 Melvin, "in case you don't find the owner let's just pawn straight to the pawnshop and pawned the ring for P50,000.00 Eman never saw PO1 Melvin again.**

What is the criminal liability of PO1 Melvin, if any? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

PO1 Melvin committed the crime of theft when he took the bag of another, evidently with intent to gain but without violence against or intimidation of persons nor force upon things. Although he is not the one who found the property, he is considered as finder in law since the property was surrendered to him by the actual finder (People v. Avila, G.R. No. L-19786, 31 March 1923).

N.B.: There is no malversation of public funds property in this case because PO1 is not an accountable officer for public funds or property whose duties permit or require the possession or custody of government funds or property, and who shall be accountable therefor and for the safekeeping thereof in conformity with law (Arriola v. Sandiganbayan, G.R. No. 165711, 30 June 2006).

- 202. Eliseo, the deputy sheriff, conducted the execution sale of the property of Andres to satisfy the judgment against him in favor of ABC Corporation, a government-owned or controlled corporation with an original charter. However, the representative of the corporation failed to attend the auction sale. Gonzalo, the winning bidder, purchased property for P100,000 which he paid to Eliseo. Instead of remitting the amount to the Clerk of Court as ex-officio Provincial Sheriff, Eliseo lent the amount to Myrna, his officemate, who promised to repay the amount within two months, with interest thereon. However, Myrna reneged on her promise. Despite demands of ABC Corporation, Eliseo failed to remit the said amount.**

- A) State with reasons, the crime or crimes, if any, committed by Eliseo. (2008 Bar Question)**
B) Would your answer to the first question be the same if ABC Corporation were a private corporation? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

A) Eliseo committed malversation for allowing Myrna to misappropriate the money for which he, as Sheriff, is accountable for (Art. 217, RPC). In this case, the act of Eliseo of lending the amount to his officemate is tantamount to permitting any other person to take the public funds, considering that the P100,000 involved is a public funds, it should be turned-over to the Office of the Clerk of Court.

B) The answer would be the same since even if ABC is a private corporation, Eliseo is still accountable for it, and the same should be delivered to the Court.

203. Upon opening a letter containing 17 money orders, the mail carrier forged the signatures of the payees on the money orders and encashed them. What crime or crimes did the mail carrier commit? Explain briefly. (2008 Bar Question)

SUGGESTED ANSWER:

The mail carrier may be guilty of the following crimes:

- (a) malversation and falsification (*People v. Villanueva*);
- (b) infidelity in the custody of documents (*US v. Gorospe*);
- (c) qualified theft since the property stolen is a mail matter (*Marcelo v. Sandiganbayan*);
- (d) forgery under Art. 169 (2) RPC because there was a material alteration on a genuine document (*US v. Solito*, 36 Phil 785); and
- (e) falsification under Art. 171 (1), (2) RPC because he counterfeited signatures to make it appear that the payees signed the money order and received payment.

204. Manolo revealed to his friend Domeng his desire to kill Cece. He likewise confided to Domeng his desire to borrow his revolver. Domeng lent it. Manolo shot Cece in Manila with Domeng's revolver. As his gun was used in the killing, Domeng asked Mayor Tan to help him escape. The mayor gave Domeng P5,000.00 and told him to proceed to Mindanao to hide. Domeng went to Mindanao. The mayor was later charged as an accessory to Cece's murder.

Can he be held liable for the charge? Explain. (2007 Bar Question)

SUGGESTED ANSWER:

No, the mayor may not be charged as an accessory because he merely helped Domeng, an accomplice, to escape. Par. 3 of Art. 19, of the Revised Penal Code speaks of harboring or assisting in the escape of a principal, not an accomplice.

G. Crimes against Persons

205. Sixteen year old Aliswan prodded Amethyst, his girlfriend, to remove her clothing while they were secretly together in her bedroom late one evening. Failing to get a positive response from her, he forcibly undressed her. Apprehensive about rousing the attention of the household who did not know of his presence inside her room, she resisted him with minimal strength, but she was really sobbing in a muffled manner. He then undressed himself while blocking the door. Yet, the image of a hapless and sobbing Amethyst soon brought him to his senses, and impelled him to leave her room naked. He did not notice in his hurry that Amante, the father of Amethyst, who was then sitting alone on a sofa in the sala, saw him leave his daughter's room naked.

Outside the house, the now-clothed Aliswan spotted Allesso, Amethyst's former suitor. Knowing how Allesso had aggressively pursued Amethyst, Aliswan fatally stabbed Allesso. Aliswan immediately went into hiding afterwards.

Upon learning from Amethyst about what Aliswan had done to her, an enraged Amante wanted to teach Aliswan a lesson he would never forget. Amante set out the next day to look for Aliswan in his school. There, Amante found a young man who looked very much like Aliswan. Amante immediately rushed and knocked the young man unconscious on the pavement, and then draped his body with a prepared tarpaulin reading *RAPIST AKO HUWAG TULARAN*. Everyone else in the school was shocked upon witnessing what had just transpired, unable to believe that the timid and quiet Alisto, Aliswan's identical twin brother, had committed rape. (2017 Bar Question)

- A) A criminal complaint for *attempted rape with homicide* was brought against Aliswan in the Prosecutor's Office. However, after preliminary investigation, the Investigating Prosecutor recommended the filing of two separate informations – one for attempted rape and the other for homicide. Do you agree with the recommendation? Explain your answer.
- B) Before the trial court, Aliswan moved that the cases should be dismissed because he was entitled to the exempting circumstance of minority. Is his motion correct? Explain your answer.
- C) After receiving medical attendance for 10 days, Alisto consulted you about filing the proper criminal complaint against Amante. What crimes, if any, will you charge Amante with? Explain your answer.
- D) Answering the criminal complaint filed by Alisto, Amante contended that he had incurred no criminal liability for lack of criminal intent on his part, his intended victim being Aliswan, not Alisto. What is this defense of Amante, and explain if the same will prosper?

SUGGESTED ANSWER:

- A) I disagree with the charge of attempted rape, while I agree on the separate crime of homicide.

I do not agree with the charge of attempted rape because of the failure to show that Aliswan had done acts to have sex with Amethyst. Undressing the victim with lewd design merely constitutes acts of lasciviousness [*People v. Sanico*, (G.R. No. 208469, Aug. 13, 2014)].

I agree with the separate charge of homicide because the homicide is not even connected with the acts of lasciviousness. Homicide was committed motivated by a personal grudge of Aliswan against Alesso, which has no link to the crime of acts of lasciviousness against Amethyst.

- B) Since Aliswan's age is above 15 but below 18, being the twin brother of 16 year old Aliswan, the exempting circumstance of minority shall be appreciated in his favor unless it is shown that he acted with discernment.
- C) Amante shall be charged with Less Serious Physical Injuries under Art. 265 of the Revised Penal Code because he needed medical attendance for a period of ten (10) days only.

However, the circumstance of adding ignominy to the offense shall be appreciated to add the penalty of a fine not exceeding Php500.00 because the injuries were inflicted to insult or offend the offended party.

- D) The defense raised by Amante is error in personae. This defense is not proper because of Article 4 of the Revised Penal Code, which provides that a person committing a felony is liable criminally although the wrongful act done be different from unlawful intent. Thus, under this provision, Amante is liable for the wrongful act done, and that is child abuse against Alisto, although it differs from the wrongful act intended, and that is abusing Aliswan.

206. If the slightest penetration of the female genitalia consummates Rape by Carnal Knowledge, how does the accused commit Attempted Rape by Carnal Knowledge? (2017 Bar Question)

SUGGESTED ANSWER:

To be held liable for attempted rape by carnal knowledge the acts must be committed with clear intention to have sexual intercourse, but the penis of the accused must not touch the labia of the pudendum of the

victim. Intent to have sexual intercourse is present if it is shown that the erectile penis of the accused is in the position to penetrate or the accused actually commenced to force his penis into the victim's sexual organ.

207. Why is there no crime of frustrated serious physical injuries? (2017 Bar Question)

SUGGESTED ANSWER:

The crime of Serious Physical Injuries is a formal crime consummated by a single act. Once the injuries are inflicted, the offense is consummated.

208. Jojo and Felipa are husband and wife. Believing that his work as a lawyer is sufficient to provide for the needs of their family, Jojo convinced Felipa to be a stay-at-home mom and care for their children. One day, Jojo arrived home earlier than usual and caught Felipa in the act of having sexual intercourse with their female nanny, Alma, in their matrimonial bed. In a fit of rage, Jojo retrieved his revolver from inside the bedroom cabinet and shot Alma, immediately killing her. (2016 Bar Question)

- A) Is Art. 247 (death or physical injuries inflicted under exceptional circumstances) of the Revised Penal Code applicable in this case given that the paramour was of the same gender as the erring spouse?**
- B) Is Felipa liable for adultery for having sexual relations with Alma?**

SUGGESTED ANSWER:

- A) No, Article 247 of the Revised Penal Code is not applicable because the offender must catch his or her spouse in the act of committing sexual intercourse with another person.

Sexual intercourse presupposes the penetration of the man's sexual organ into that of a woman's. In this case, the paramour was of the same gender as the erring spouse. As such, there is legally, no sexual intercourse to speak of, hence, Art. 247 is not applicable.

- B) No. Under Article 333 of the Revised Penal Code, adultery is committed by any married woman who shall have sexual intercourse with a "man" not her husband. Thus, Felipa, in having homosexual intercourse with Alma, a "woman", is not committing adultery.

209. Lina worked as a housemaid and yaya of the one-week old son of the spouses John and Joana. When Lina learned that her 70-year old mother was seriously ill, she asked John for a cash advance of P20,000.00, but the latter refused. In anger, Lina gagged the mouth of the child with stockings, placed him in a box, sealed it with masking tape, and placed the box in the attic. Lina then left the house and asked her friend Fely to demand a P20,000.00 ransom for the release of the spouses' child to be paid within twenty-four hours. The spouses did not pay the ransom. After a couple of days, John discovered the box in the attic with his child already dead. According to the autopsy report, the child died of asphyxiation barely minutes after the box was sealed.

What crime or crimes, if any, did Lina and Fely commit? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

Lina is liable for murder committed by killing the child qualified by the circumstance of treachery. She took advantage of the child's tender age. Killing a child of tender age is held to be attended by treachery.

Fely is not liable for any crime. Fely did not participate in the actual killing of the child, and it was not shown that there is conspiracy nor community of design to commit murder since her criminal intention

pertains to kidnapping for ransom. Moreover, her participation of demanding ransom for the release of the child is not connected to murder. Mens rea without actus reus is not a crime.

N.B. Lina is not guilty of kidnapping with murder because the child was not deprived of liberty. The child was essentially not deprived of liberty. The demand for ransom did not convert the offense into kidnapping. The demand for ransom is only a part of the diabolic scheme of the defendant to murder the child, to conceal his body and then demand money before the discovery of the cadaver.

210. The Regional Trial Court (RTC) found Tiburcio guilty of frustrated homicide and sentenced him to an indeterminate penalty of four years and one day of prision correccional as minimum, to eight years of *prision mayor* as maximum, and ordered him to pay actual damages in the amount of P25,000.00. Tiburcio appealed to the Court of Appeals which sustained his conviction as well as the penalty imposed by the court *a quo*. After sixty days, the Court of Appeals issued an Entry of Judgment and remanded the records of the case to the RTC. Three days thereafter, Tiburcio died of heart attack. Atty. Abdul, Tiburcio's counsel, filed before the RTC a Manifestation with Motion to Dismiss, informing the court that Tiburcio died already, and claiming that his criminal liability had been extinguished by his demise. (2015 Bar Question)

- A) Should the RTC grant the Motion to Dismiss the case? Explain.**
- B) Assuming that Tiburcio's death occurred before the Court of Appeals rendered its decision, will you give a different answer? Explain.**

SUGGESTED ANSWER:

- A) The RTC may not grant the motion to dismiss because the Court of Appeals already issued an Entry of Judgment and the decision has become final and executory. However, the pecuniary penalty, such as the civil liability arising from the crime consisting of actual damages of P25,000, survives the death of Tiburcio.
- B) Yes. The RTC decision must be set aside and the case against Tiburcio must consequently be dismissed. The demise of Tiburcio which occurred before the Court of Appeals rendered its decision causes his criminal liability, as well as his civil liability *ex delicto*, to be totally extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action is instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.

211. Procopio, a call center agent assigned at a graveyard shift, went home earlier than usual. He proceeded immediately to their bedroom to change his clothes. To his surprise, he found his wife Bionci in bed making love to another woman Magna. Enraged, Procopio grabbed a knife nearby and stabbed Bionci, who died. (2015 Bar Question)

- A) What crime did Procopio commit, and what circumstance attended the case? Explain.**
- B) Assuming that Procopio and Bionci were common-law spouses, will your answer be the same? Explain.**

SUGGESTED ANSWER:

- A) Procopio committed parricide for killing his wife. This case does not fall under death by exceptional circumstance under Article 247 of the Revised Penal Code because Bionci was caught having homosexual intercourse, which is not "sexual intercourse" under the law.

The crime was attended by the circumstance of passion arising from a lawful sentiment as a result of having caught his wife in the act of infidelity with another woman (*People v. Belarmino*, G.R. No. L-4429, April 18, 1952, *En Banc*).

- B) The crime committed is Homicide if Procopio and Bionci were common law spouses. Parricide contemplates killing by a spouse who is legally married to the victim.

212. After a heated argument over his philandering, Higino punched on the head his wife Aika, who was six and a half months pregnant. Because of the impact, Aika lost her balance, fell on the floor with her head hitting a hard object. Aika died and the child was expelled prematurely. After thirty-six hours, the child died. (2015 Bar Question)

- A) What crime(s) did Higino commit? Explain.
 B) Assuming that when the incident occurred, Aika was only six months pregnant, and when she died, the fetus inside her womb also died, will your answer be different? Explain.

SUGGESTED ANSWER:

- A) Higino committed two counts of parricide for the death of his wife and his child. Article 246 of Revised Penal Code is committed because of the qualifying circumstance of relationship. This is a complex crime because the single act of punching the victim constitutes two grave felonies (Article 48).
 B) Yes. If the child died inside the womb of Aika, who was only six months, the crime committed is complex crime of parricide with unintentional abortion. Killing the unborn child as a result of the violence employed against the mother without intent to abort is unintentional abortion. Because the same violence that killed the mother also caused unintentional abortion, the crime committed is a complex crime.

213. Charlie was charged for the qualified rape of AAA. The Information alleged that AAA was 14 years old at the time the crime was committed and that Charlie was AAA's stepfather. The presentation of AAA's birth certificate during the trial duly established the following: (1) that AAA was indeed 14 years old at the time of the rape; and (2) that AAA's mother is BBB and her father was the late CCC. BBB and Charlie only became live-in partners after CCC's death. The RTC found Charlie guilty of qualified rape. On appeal, the Court of Appeals convicted Charlie of simple rape. Charlie appealed before the Supreme Court. How will you rule and why? (2015 Bar Question)

SUGGESTED ANSWER:

The Court of Appeals' ruling is wrong because the crime of qualified rape was proven. Minority and step-relationship as qualifying circumstances are alleged in the information and proven by the evidence.

214. Macho married Ganda, a transgender. Macho was not then aware that Ganda was a transgender. On their first night, after their marriage, Macho discovered that Ganda was a transgender. Macho confronted Ganda and a heated argument ensued. In the course of the heated argument, a fight took place wherein Ganda got hold of a knife to stab Macho. Macho ran away from the stabbing thrusts and got his gun which he pointed at Ganda just to frighten and stop Ganda from continuing with the attack. Macho had no intention at all to kill Ganda. Unfamiliar with guns, Macho accidentally pulled the trigger and hit Ganda that caused the latter's death.

What was the crime committed? (2014 Bar Question)

SUGGESTED ANSWER:

Macho did not commit any crime because he acted in self-defense [Art. 13 (1)].

215. Pretty was a campus beauty queen who, because of her looks and charms, attracted many suitors. Having decided that she would become a nun, Pretty turned down all her suitors. Guapo, one of her most persistent suitors, could not handle rejection and one night, decided to accost Pretty as she walked home. Together with Pogi, Guapo forced Pretty into his car and drove her to an abandoned warehouse where he and Pogi forced Pretty to dance for them. Later, the two took turns in raping her. After satisfying their lusts, Guapo and Pogi dropped her off at her house. (2014 Bar Question)
- A) What crime or crimes did Guapo and Pogi commit?
 - B) Pretty, after the ordeal, decided to take her own life by hanging herself one hour after the rape. Would Guapo and Pogi be liable for Pretty's death? Explain.

SUGGESTED ANSWER:

- A) Guapo and Pogi committed the complex crime of Forcible Abduction with Rape, and another count of rape. They abducted Pretty against her will with lewd design, and thereafter raped her. Forcible abduction was a necessary means to commit the crime of Rape. Since there is conspiracy, Guapo and Pogi are responsible not only for the rape each personally committed but also for the rape committed by his co-conspirator.
- B) Guapo and Pogi would not be held liable for the death of Pretty. Suicide is an efficient intervening cause that has broken the causal connection between the rapes and the death.

216. Choose the correct circumstance when a woman may be held liable for rape: (2013 Bar Question)

- A) With the use of force or intimidation.
- B) When the rape is committed by two or more persons.
- C) When the offender uses an instrument and inserts it in the mouth of the victim.
- D) When she befriends and puts a sleeping pill in the victim's drink to enable her husband to have intercourse with the victim.

SUGGESTED ANSWER: D.

217. If Rod killed Irene, his illegitimate daughter, after taking her diamond earrings and forcing her to have sex with him, what crime/s should Rod be charged with? (2013 Bar Question)

- A) Robbery and rape with parricide.
- B) Robbery, rape and parricide.
- C) Rape with homicide and theft.
- D) Rape with homicide.
- E) None of the above.

SUGGESTED ANSWER:

- D. Rod committed theft and the special complex crime of rape with homicide.

218. For treachery to qualify killing to murder, the evidence must show: (2012 Bar Question)

- A) The time when the accused decided to employ treachery, the overt act manifestly indicating that he clung to such determination, and a sufficient lapse of time between the decision and the execution, allowing him to reflect upon the consequence of his act.
- B) Unlawful aggression, reasonable necessity of the means to prevent or repel the aggression, and lack of sufficient provocation on the part of the victim.
- C) That the accused employed such means, methods or manner to ensure his safety from the defensive or retaliatory acts of the victim, and the mode of attack was consciously adopted.

- D) Actual sudden physical assault or threat to inflict real imminent injury to an unsuspecting victim.

SUGGESTED ANSWER: C.

219. What is the criminal liability, if any, of a pregnant woman who tried to commit suicide by poison, but she did not die and the fetus in her womb was expelled instead? (2012 Bar Question)

- A) The woman who tried to commit suicide is not criminally liable because the suicide intended was not consummated.
- B) The woman who tried to commit suicide is criminally liable for unintentional abortion which is punishable when caused by violence.
- C) The woman who tried to commit suicide is criminally liable for abortion that resulted due to the poison that she had taken to commit suicide.
- D) The woman who tried to commit suicide occurs no criminal liability for the result not intended.

SUGGESTED ANSWER:

D. The pregnant woman cannot be held liable for abortion under Article 258 of the Revised Penal Code because intent to abort, which is an essential element of this crime, is lacking. Neither can she be held liable for unintentional abortion under Article 257, because the element of violence is wanting.

220. Chris Brown was convicted of a complex crime of direct assault with homicide aggravated by the commission of the crime in a place where public authorities are engaged in the discharge of their duties. The penalty for homicide is reclusion temporal. On the other hand, the penalty for direct assault is prision correccional in its medium and maximum periods. What is the correct indeterminate penalty? (2012 Bar Question)

- A) Twelve (12) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum.
- B) Ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.
- C) Eight (8) years of prision mayor as minimum to eighteen (18) years and four (4) months of reclusion temporal as maximum.
- D) Twelve (12) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

SUGGESTED ANSWER:

A. In *People v. Rillorta*, G.R. No. 57415, December 15, 1989, and in *People v. Recto*, G.R. No. 129069, October 17, 2001, the Supreme Court En Banc found the accused guilty of the complex crime of homicide with direct assault, and sentenced him to suffer an indeterminate penalty ranging from twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum.

221. What crime is committed by a person who kills a three-day old baby? (2012 Bar Question)

- A) infanticide;
- B) homicide;
- C) murder;
- D) parricide.

SUGGESTED ANSWER: C.

222. What crime is committed by a person who kills his legitimate brother on the occasion of a public calamity? (2012 Bar Question)

- A) parricide;

- B) homicide;
- C) murder;
- D) death caused in a tumultuous affray.

SUGGESTED ANSWER:

C. Killing his legitimate brother is not parricide since he is just a collateral relative of the accused. However, killing a person on occasion of public calamity is qualifies the killing to murder.

223. The key element in a crime of parricide other than the fact of killing is the relationship of the offender to the victim. Which one of the following circumstances constitutes parricide? (2012 Bar Question)

- A) Offender killing the illegitimate daughter of his legitimate son.
- B) Offender killing his illegitimate grandson.
- C) Offender killing his common-law wife.
- D) Offender killing his illegitimate mother.

SUGGESTED ANSWER:

D. Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused (People v. Tibon, GR No. 188320, June 29, 2010). Killing his granddaughter, grandson or wife shall not be considered as parricide since the relationship is not legitimate. In parricide, the legitimacy of the relationship is an essential element thereof if the victim is the wife or the second-degree direct relative of the offender. Hence, "A", "B" or "C" is not the answer. On the other hand, killing his illegitimate mother is parricide. In parricide, the legitimacy of the relationship is not an essential element thereof if the victim is the first-degree direct relative of the offender.

224. What crime is committed when a mother kills the three-day old child of her husband with their daughter? (2012 Bar Question)

- A) parricide;
- B) infanticide;
- C) murder;
- D) homicide

SUGGESTED ANSWER:

C. The crime committed is not infanticide since the victim killed is not less than three days of age. As the child of her daughter, the baby is the illegitimate grandchild of the offender. Killing her illegitimate grandchild is not parricide. However, killing of a 3-day-old baby constitutes murder qualified by treachery.

225. When is a crime deemed to have been committed by a band? (2012 Bar Question)

- A) When armed men, at least four (4) in number, take direct part in the execution of the act constituting the crime.
- B) When three (3) armed men act together in the commission of the crime.
- C) When there are four (4) armed persons, one of whom is a principal by inducement.
- D) When there are four (4) malefactors, one of whom is armed.

SUGGESTED ANSWER:

A. There are three elements of band under Article 14 (6) of the Revised Penal Code, to wit: (1) there must be at least four malefactors, (2) at least four of them are armed (People v. Solamillo, GR No. 123161, June

18, 2003, En Banc), and (3) at least four of them take part or acted together in the commission of crime. In *People v. Lozano*, September 29, 2003, GR Nos. 137370-71, the Supreme Court En Banc stated that the four armed persons contemplated in the circumstance of band must all be principals by direct participation who acted together in the execution of the acts constituting the crime.

- 226. With intent to kill, GGG burned the house where F and D were staying. F and D died as a consequence. What is the proper charge against GGG? (2012 Bar Question)**
- A) GGG should be charged with two (2) counts of murder.
 - B) GGG should be charged with arson.
 - C) GGG should be charged with complex crime of arson with double murder.
 - D) GGG should be charged with complex crime of double murder.

SUGGESTED ANSWER:

D. If the main objective of the offender is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is murder only.

- 227. A entered the house of B. Once inside the house of B, A took and seized personal property by compulsion from B with the use of violence and force upon things, believing himself to be the owner of the personal property so seized. What is the criminal liability of A? (2012 Bar Question)**
- A) A is criminally liable for robbery with violence because he employed violence in the taking of the personal property from B, robbery characterized by violence being graver than ordinary robbery committed with force upon things.
 - B) A is criminally liable for robbery with force upon things in an inhabited house because the act was committed in a house constituting the dwelling of one or more persons.
 - C) A is criminally liable for grave coercion because the presumption of intent to gain is rebutted.
 - D) A is criminally liable for qualified trespass to dwelling because he employed violence.

SUGGESTED ANSWER:

C. A is not criminally liable for robbery since the presumption of intent to gain, an element of this crime, is rebutted because he took the personal property under a bona fide belief that he owns the property. However, A is liable for grave coercion because he used violence in seizing the property by reason of his mistaken belief that he owned it.

- 228. What crime is committed when a person ill-treats another by deed without causing any injury? (2012 Bar Question)**
- A) The offender commits maltreatment.
 - B) The offender commits slander by deed.
 - C) The offender commits assault.
 - D) The offender commits coercion.

SUGGESTED ANSWER:

A. Maltreatment is committed by an offender, who shall ill-treat another by deed without causing any injury (Article 266 of the Revised Penal Code).

- 229. Explain and illustrate the stages of execution of the crime of homicide, taking into account the nature of the offense, the essential element of each of the stages of execution and the manner of committing such international felony as distinguished from felony committed through reckless imprudence. (2012 Bar Question)**

SUGGESTED ANSWER:

Elements of the crime – homicide as an intentional felony has three stages, attempted, frustrated and consummated. In whatever stages homicide is committed, intent to kill must be established for being an indispensable element thereof. However, if the victim died as a consequence of wound cause by an act committed with malice, intent to kill is conclusively presumed and the crime committed is consummated homicide. But if the victim did not die as a consequence of wounds cause by an act committed with malice, intent to kill must be established beyond reasonable doubt. If intent to kill is proven, the crime committed is frustrated or attempted homicide. If intent to kill is not proven, the crime committed is physical injuries. Thus, lack of intent to kill is a defense in attempted or frustrated homicide.

Nature of the crime – if the offender with intent to kill attempted to inflict or inflicted non-mortal wounds upon the victim, he already directly commenced an overt act to commit homicide. Hence, the crime committed is attempted homicide if he failed to inflict mortal wounds upon the victim by reason of some cause or accident other than his own spontaneous desistance. If the offender with intent to kill inflicted mortal wounds upon the victim, he already performed all acts of execution which would have produced the homicide as a consequence. If death is not produced despite the mortal character of the wounds due to causes independent to the will of the offender, the crime committed is frustrated homicide. If death is produced, the crime committed is consummated homicide.

Intentional felony and culpable felony – homicide regardless of stages must be committed with malice (general intent) and intent to kill (specific intent). Even if there is no intent to kill and evil intent, the offender is liable for culpable felony if the victim died or injured as a result of the recklessness of the former. If there is no intent to kill, evil intent and recklessness on the part of the accused, he is not liable for his intentional act, which cause the death of or injury upon the victim because of the exempting circumstance of accident.

230. A, B, and C agreed to rob a house of its cash. A and B entered the house while C remained outside as lookout. After getting the cash, A and B decided to set the house on fire to destroy any evidence of their presence. What crime or crimes did C commit? (2011 Bar Question)
- A) Robbery and arson since arson took place as an incident of the robbery.
 - B) Robbery and arson since C took no step to stop the arson.
 - C) Just for robbery since he only agreed to it and served as lookout.
 - D) Accomplice to robbery since his role in the crime was minimal.

SUGGESTED ANSWER: C.

231. X killed B, mistakenly believing that she was his wife, upon surprising her having sex with another man in a motel room. What is the criminal liability of X? (2011 Bar Question)
- A) None since he killed her under exceptional circumstances.
 - B) None since he acted under a mistake of fact.
 - C) Parricide.
 - D) Homicide.

SUGGESTED ANSWER: D.

232. Removing, concealing or destroying documents to defraud another constitutes the crime of estafa if committed by: (2011 Bar Question)
- A) any public officer.
 - B) a public officer officially entrusted with the document.
 - C) private individuals who executed the same.
 - D) private individuals.

SUGGESTED ANSWER: D.

233. The accused was shocked to discover his wife and their driver sleeping in the master's bedroom. Outraged, the accused got his gun and killed both. Can the accused claim that he killed the two under exceptional circumstances? (2011 Bar Question)
- A) No, since the accused had time to reflect when he got his gun.
 - B) No, since the accused did not catch them while having sexual intercourse.
 - C) Yes, since the wife and their driver desecrated the marital bed.
 - D) Yes, since the scene shows that they had an intimate relationship.

SUGGESTED ANSWER: B.

234. On hearing a hospital ward patient on the next bed, shrieking in pain and begging to die, Mona shut off the oxygen that was sustaining the patient, resulting in his death. What crime if any did Mona commit? (2011 Bar Question)
- A) Homicide.
 - B) Murder if she deliberated on her action.
 - C) Giving Assistance to Suicide.
 - D) Euthanasia.

SUGGESTED ANSWER: B.

235. A, B and C are members of SFC Fraternity. While eating in a seaside restaurant, they were attacked by X, Y and Z, members of a rival fraternity. A rumble ensued in which the abovenamed members of the two fraternities assaulted each other in a confused and tumultuous manner resulting in the death of A. As it cannot be ascertained who actually killed A, the members of the two fraternities who took part in the rumble were charged for death caused in a tumultuous affray. Will the charge prosper? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, the charge of death caused in a tumultuous affray will not prosper because the persons involved in this case composed groups organized for the common purpose of assaulting and attacking each other reciprocally.

The killer of A, a member of SFC Fraternity could not be any other but member of the rival fraternity. Conspiracy is therefore present among the attackers from the rival fraternity and thus rules out the idea of an affray. The liability of the attackers should be collective for the crime of homicide or murder as the case may be.

236. Charlie hated his classmate, Brad, because the latter was assiduously courting Lily, Charlie's girlfriend. Charlie went to a veterinarian and asked for some poison on the pretext that it would be used to kill a very sick, old dog. Actually, Charlie intended to use the poison on Brad.

The veterinarian mistakenly gave Charlie a non-toxic powder which, when mixed with Brad's food, did not kill Brad.

Would your answer be the same if Brad proved to be allergic to the powder, and after ingesting it with his food, fell ill and was hospitalized for ten (10) days? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, the answer would not be the same. Charlie would be criminally liable for less serious physical injuries because his act of mixing the powder with Brad's food was done with felonious intent and was the proximate cause of Brad's illness for 10 days.

237. Wenceslao and Loretta were staying in the same boarding house, occupying different rooms. One late evening, when everyone in the house was asleep, Wenceslao entered Loretta's room with the use of a picklock. Then, with force and violence, Wenceslao ravished Loretta. After he had satisfied his lust, Wenceslao stabbed Loretta to death and, before leaving the room, took her jewelry.

What crime or crimes, if any, did Wenceslao commit? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Wenceslao committed the following crimes:

- (1) the special complex crime of rape with homicide because his act of having carnal knowledge of Loretta against her will and with the use of force and violence constituted rape, and death of Loretta was by reason or on the occasion of the rape;
- (2) theft because the taking of jewelry is a mere afterthought; and
- (3) unlawful possession of picklocks and similar tools under Art. 304 of the Revised Penal Code, because of his possession and use of the picklock "without lawful cause."

238. Wenceslao and Loretta were staying in the same boarding house, occupying different rooms. One late evening, when everyone in the house was asleep, Wenceslao entered Loretta's room with the use of a picklock. Then, with force and violence, Wenceslao ravished Loretta. After he had satisfied his lust, Wenceslao stabbed Loretta to death and, before leaving the room, took her jewelry.

Would your answer to [a] [above] be the same if, despite the serious stab wounds she sustained, Loretta survived? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, the answer will be different. There will be four separate crimes of:

- (1) rape;
- (2) frustrated homicide or murder;
- (3) theft; and
- (4) unlawful possession and use of picklocks under Art. 304 of the Revised Penal Code.

The special complex crime of rape with homicide is constituted only when both of them are consummated.

239. Following his arrest after a valid buy-bust operation, Tommy was convicted of violation of Section 5, Republic Act 9165. On appeal, Tommy questioned the admissibility of the evidence because the police officers who conducted the buy-bust operation failed to observe the requisite "chain of custody" of the evidence confiscated and/or seized from him.

What is the "chain of custody" requirement in drug offenses? What is its rationale? What is the effect of failure to observe the requirement? (2009 Bar Question)

SUGGESTED ANSWER:

"Chain of Custody" requirement in drug offense refers to the duly recorded, authorized movement and custody of seized dangerous drugs, controlled chemicals, plant sources of dangerous drugs, and laboratory equipment of dangerous drugs from the time confiscation/seizure thereof from the offender, to its turn-over and receipt in the forensic laboratory for examination to its safekeeping and eventual presentation/offer in court as evidence of the criminal violation, and for destruction (Dangerous Drugs

Board Regulation No. 1 Series of 2002).

Its rationale is to preserve the authenticity of the corpus delicti or body of the crime by rendering it improbable that the original item seized/confiscated in violation has been exchanged or substituted with another or tampered with or contaminated. It is a method of authenticating the evidence as would support a finding beyond reasonable doubt that the matter is what the prosecution claims to be.

Failure to observe the "chain of custody" requirement renders the evidence questionable, not trustworthy and insufficient to prove the corpus delicti beyond reasonable doubt. Hence, Tommy would be acquitted on reasonable doubt.

- 240. Francis and Joan were sweethearts, but their parents had objected to their relationship because they were first cousins. They forged a pact in writing to commit suicide. The agreement was to shoot each other in the head which they did. Joan died. Due to medical assistance, Francis survived. Is Francis criminally liable for the death of Joan? Explain. (2008 Bar Question)**

SUGGESTED ANSWER:

Yes. Francis is criminally liable for assisting in the suicide of Joan, as evidenced by their written pact (Art. 253, RPC).

- 241. Roger, the leader of a crime syndicate in Malate, Manila, demanded the payment by Antonio, the owner of a motel in that area, of P10,000 a month as "protection money". With the monthly payment, Roger assured, the syndicate would provide protection to Antonio, his business, and his employees. Should Antonio refuse, Roger warned, the motel owner would either be killed or his establishment destroyed. Antonio refused to pay the protection money. Days later, at round 3:00 in the morning, Mauro, a member of the criminal syndicate, arrived at Antonio's home and hurled a grenade into an open window of the bedroom where Antonio, his wife and their 3-year-old daughter were sleeping. All three of them were killed instantly when the grenade exploded.**

State, with reason, the crime or crimes that had been committed as well as the aggravating circumstances, if any, attendant thereto. (2008 Bar Question)

SUGGESTED ANSWER:

Roger and Mauro conspired to commit the crime of murder qualified by treachery, with the use of means involving great waste and ruin. In this case, Mauro is liable as a principal by direct participation by using a grenade and hurled into an open window of the victim's bedroom. Killing the victims while they were sleeping and in no position to defend themselves, is a treacherous act (People v. Aguilar, 88 Phil 693, 1951).

The following are the aggravating circumstances:

- (1) Treachery (Art. 14 of the Revised Penal Code)
- (2) Special Aggravating Circumstances:
 - (a) Sec. 3, R.A. 8294 – when a person commits any of the crime under the RPC or special laws with the use of explosive, etc. and alike incendiary devices which resulted in the death of any person.
 - (b) Art. 23, R.A. 7659 – organized/syndicated crime group.

- 242. Eddie brought his son Randy to a local faith healer known as "Mother Himala." He was diagnosed by the faith healer as being possessed by an evil spirit. Eddie thereupon authorized the conduct of a "treatment" calculated to drive the spirit from the boy's body. Unfortunately, the procedure conducted resulted in the boy's death.**

The faith healer and tree others who were part of the healing ritual were charged with murder and convicted by the lower court. If you are appellate court Justice, would you sustain the conviction upon appeal? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

No, the conviction of murder should not be sustained because there was no intent kill. The intent of the accused, on the contrary is to treat Randy of his illness. However, considering that proximate cause of Randy's death is the ritual, accused may be held criminally liable for Reckless Imprudence Resulting in Homicide.

- 243. During a concert of Gary V. and in order to prevent the crowd from rushing to the stage, Rafael Padilla (a security guard) pointed his gun at the onrush of people. When the crowd still pushed forward, Rafael fired his gun into air to scare them off. However, the bullet hit one of the metal roof supports, ricocheted and then hit one of the stage crew members, causing injuries which resulted in the latter's confinement in a hospital for twelve days.**

What crime/s did Rafael commit? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

Rafael is guilty of Simple Negligence Resulting in Less Serious Physical Injuries because the physical injuries, which required only twelve (12) days of medical attention resulting therefrom, shows a lack of precaution in a situation where the danger to the discharge of the firearm is not clearly manifest.

Moreover, since the discharge of the firearm was to ward off the unruly crowd, and not to cause alarms or was not directed to a particular person, it is neither Alarms and Scandal under Art. 155 nor Illegal Discharge of Firearms under Art. 254 of the Revised Penal Code.

H. Crimes against Personal Liberty and Security

- 244. Angelino, a Filipino, is a transgender who underwent gender reassignment and had implants in different parts of her body. She changed her name to Angelina and ^[1]_{SEP} was a finalist in the Miss Gay International. She came back to the Philippines and while she was walking outside her home, she was abducted by Max and Razy who took her to a house in the province. She was then placed in a room and Razy forced her to have sex with him at knife's point. After the act, it dawned upon Razy that Angelina is actually a male. Incensed, Razy called Max to help him beat Angelina. The beatings that Angelina received eventually caused her death. What crime or crimes, if any, were committed? Explain. (2016 Bar Question)**

SUGGESTED ANSWER:

Razy is liable for kidnapping with homicide. Since Angelino was killed in the course of the detention, the crime constitutes kidnapping with homicide under Article 267 of the Revised Penal Code.

The abduction of Angelino could not be forcible abduction since the victim must be a woman. Similarly, there is no rape through sexual intercourse since Angelino remains to be male.

There is also no rape through sexual assault because Razy neither inserted his penis into the anal orifice or mouth of Angelino nor another instrument or object into anal orifice or genital orifice. The act constitutes acts of lasciviousness under Article 336 which was committed by reason or occasion of kidnapping. Thus, it will be integrated into one and indivisible felony of kidnapping with homicide (People v. De Leon, GR No. 179943, June 26, 2009; People v. Jugueta, G.R. No. 202124, April 05, 2016; People v.

Laog, G.R. No. 178321, October 5, 2011; People v. Laog, G.R. No. 178321, October 5, 2011; People v. Larranaga, 138874-75, February 3, 2004).

Max is liable for kidnapping with homicide as an accomplice since he concurred in the criminal design of Razy in depriving Angelino his liberty and supplied the former material aid in an efficacious way by helping him beat the latter.

245. *A, B, and C agreed to rob the house of Mr. D at 10 o'clock in the evening, with C as the driver of the tricycle which they would use in going to and leaving the house of Mr. D, and A and B as the ones who would enter the house to get the valuables of Mr. D. As planned, C parked the tricycle in a dark place, while A and B entered the house thru an open door. Once inside, A entered the master's bedroom and started getting all the valuables he could see, while B entered another room. While inside the room, B saw a male person and immediately B brought out his gun but he accidentally pulled its trigger. The bullet went through the window, hitting a neighbor that killed him. Neighbors were then awakened by the gunfire and policemen were alerted. Not long after, policemen arrived. A and B panicked and got hold of a young boy and shouted to the policemen who were already outside of the house that they would harm the boy if the policemen did not disperse. A and B demanded that they should be allowed to use a vehicle to bring them to a certain place and that would be the time that they would release the young boy. The policemen acceded. In the meantime, C was arrested by the policemen while he was about to flee, while A and B, after releasing the young boy, were arrested.*

What crime/s did A, B, and C commit, and what modifying circumstances attended the commission of the crime/s? (2014 Bar Question)

SUGGESTED ANSWER:

A, B, and C, in conspiracy, committed the crime of robbery with homicide under Article 294 of the Revised Penal Code because the criminal design was to rob Mr. D, and was attended by a killing on the occasion of the robbery. Even if said death is accidental, the crime is still robbery with homicide because the killing took place on occasion of the robbery.

The aggravating circumstance of dwelling is present because the crime was committed inside the dwelling of the offended party who has not given the any provocation.

246. *While walking alone on her way home from a party, Mildred was seized at gun point by Felipe and taken on board a tricycle to a house some distance away. Felipe was with Julio, Roldan, and Lucio, who drove the tricycle.*

At the house, Felipe, Julio, and Roldan succeeded in having sexual intercourse with Mildred against her will and under the threat of Felipe's gun. Lucio was not around when the sexual assaults took place as he left after bringing his colleagues and Mildred to their destination, but he returned every day to bring food and the news in town about Mildred's disappearance. For five days, Felipe, Julio and Roldan kept Mildred in the house and took turns in sexually assaulting her. On the 6th day, Mildred managed to escape; she proceeded immediately to the nearest police station and narrated her ordeal.

What crime/s did Felipe, Julio, Roldan, and Lucio commit and what was their degree of participation? (2013 Bar Question)

SUGGESTED ANSWER:

Felipe, Julio, Roldan and Lucio are all liable for the special complex crime of Kidnapping and Serious Illegal Detention with Rape. In a special complex crime of Kidnapping with Rape, the resultant crime is only one kidnapping and serious illegal detention with rape regardless of the number of rapes committed.

As to the degree of their participation, Felipe, Julio, Roldan and Lucio are all liable as principals. There was implied conspiracy as they acted toward a single criminal design or purpose. (People vs. Mirandilla, Jr., GR 186417, July 27, 2011). Although Lucio was not around when the sexual assaults took place, there is complicity on his part as he was the one who drove the tricycle at the time the victim was seized and he returned every day to bring food and news to his conspirators.

247. What is the crime committed by any person who, without reasonable ground, arrests or detains another for the purpose of delivering him to the proper authorities? (2012 Bar Question)
- A) unlawful arrest;
 - B) illegal detention;
 - C) arbitrary detention;
 - D) grave coercion.

SUGGESTED ANSWER: A.

248. What is the criminal liability, if any, of a private person who enters the dwelling of another against the latter's will and by means of violence or intimidation for the purpose of preventing some harm to himself? (2012 Bar Question)
- A) The private person is criminally liable for qualified trespass to dwelling.
 - B) The private person is criminally liable for simple trespass to dwelling.
 - C) The private person incurs no criminal liability.
 - D) The private person is criminally liable for light threats.

SUGGESTED ANSWER:

C. Under Article 280 of the Revised Penal Code, qualified trespass to dwelling is committed by any private person who shall enter the dwelling of another against the latter's will and by means of violence or intimidation. However, the provisions of Article 280 shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself.

249. The three accused forcibly took their victim from his car but the latter succeeded in freeing himself from their grip. What crime did the three accused commit? (2011 Bar Question)
- A) forcible abduction.
 - B) frustrated kidnapping.
 - C) attempted kidnapping.
 - D) grave coercion.

SUGGESTED ANSWER: D.

250. A widower of ten years, septuagenarian Canuto felt that he had license to engage in voyeurism. If not peeping into his neighbors' rooms through his powerful single-cylinder telescope, he would trail young, shapely damsels along the hallways of shopping malls. While going up the escalator, he stayed a step behind a mini-skirted one, and in a moment of excitement, put his hand on her left hip and massaged it. The damsel screamed and hollered for help. Canuto was apprehended and brought up on inquest. What charge/s, if any, may he be held responsible for? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Canuto may be held liable only for the milder crime of “unjust vexation” which is a form of light coercion under Art. 287 of the Revised Penal Code.

Holding the hip of a person is not per se lascivious but undoubtedly annoys, irritates, and vexes the young offended party.

- 251. At the Maligaya Disco Club, Leoncio and Evelyn were intimately dancing a very seductive dance number. While gyrating with their bodies, Leoncio dipped his private parts in Evelyn’s buttocks. Incensed, Evelyn protested, but Leoncio continued and tightly embraced her.**

What crime or crimes, if any, did Leoncio commit? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Leoncio committed the crime of unjust vexation only because the act was done in the course of dancing. The act of dipping his private parts in Evelyn’s buttocks during a very seductive dance, although offensive to Evelyn, may be viewed as part of a dirty dancing. Lewd intent cannot be presumed from the act of dirty dancing. Moreover, the act was perpetrated in a public place and with an audience, which negates lewd design or lascivious intent.

- 252. At the Maligaya Disco Club, Leoncio and Evelyn were intimately dancing a very seductive dance number. While gyrating with their bodies, Leoncio dipped his private parts in Evelyn’s buttocks. Incensed, Evelyn protested, but Leoncio continued and tightly embraced her.**

Would your answer be the same if, even after the music had stopped, Leoncio continued to dance dirty, rubbing his private parts on Evelyn’s buttocks? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, the crime would then be acts of lasciviousness. That the music for dancing had already stopped, puts an end to any pretense of dancing by Leoncio. His continued dirty acts absent the dancing as there was no music anymore is patently lewd and lascivious. More so, Evelyn already protested Leoncio’s lewd acts in the course of dancing.

- 253. TRUE or FALSE then explain your answer in not more than two (2) sentences.**

The creditor who resorts to forced labor of a child under the pretext of reimbursing himself for the debt incurred by the child’s father commits the crime of slavery. (2009 Bar Question)

SUGGESTED ANSWER:

False, the proper offense is exploitation of child labor (Art. 273, RPC). This is committed by a person, who under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of a minor, shall against the minor’s will, retain him in his services.

- 254. Virgilio, armed with a gun, stopped a van along a major thoroughfare in Manila, pointed the gun at the driver and shouted: “*Tigil! Kidnap ito!*”**

Terrified, the driver, Juanito, stopped the van and allowed Virgilio to board. Inside the van were Jeremias, a 6-year-old child, son of a multi-millionaire, and Daday, the child’s nanny. Virgilio told Juanito to drive to a deserted place, and there, ordered the driver to alight. Before Juanito was allowed to go, Virgilio instructed him to tell Jeremias’ parents that unless they give a ransom of

P10-million within two (2) days, Jeremias would be beheaded. Daday was told to remain in the van and take care of Jeremias until the ransom is paid. Virgilio then drove the van to his safehouse.

What crime or crimes, if any, did Virgilio commit? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

The crime committed against Jeremias, the 6-year-old child, is Kidnapping with Serious Illegal Detention under Art. 267(4) of the Revised Penal Code.

The criminal intent of Virgilio is to deprive Jeremias his liberty to demand ransom. Whether or not the ransom was eventually obtained will not affect the crime committed because the demand for ransom is not an element of the crime; it only qualifies the penalty to death but the imposition of the penalty is now prohibited by Rep. Act. No. 9346.

As to Daday, the nanny of the child who was told to remain in the van and take care of the child until the ransom is paid, the crime committed by Virgilio is Serious Illegal Detention because the offended party deprived of liberty is a female (Art. 267, par.4, RPC).

Virgilio committed Grave Coercion (Art. 286, RPC) for seriously intimidating the driver with a gun pointed at him to drive to a deserted place.

- 255. Pinky was a lessee of a market stall owned by Giovanni. When Pinky refused to pay her rental, Giovanni nailed some wooden barricades on one of the sides of the market stall and posted this warning: "We have closed this portion of the door. Do not open it or else something may happen to you."**

What crime/s did Giovanni commit, if any? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

Giovanni committed light coercion or unjust vexation under Art. 287 of the Revised Penal Code. Although what was done by Giovanni could reasonably be assumed as a retaliation to the lessee's refusal to pay rent, there was no violence in the premises, such would not bring about a case of grave coercion.

The written warning which states "or else something may happen to you" is so equivocal that it may not be interpreted as felonious.

I. Crimes against Property

- 256. What crime is committed by a *capataz* who enrolls two fictitious names in the payroll and collects their supposed daily wages every payday? (2017 Bar Question)**

SUGGESTED ANSWER:

The crime committed is Estafa through Falsification of Public Documents. A *capataz* is a foreman for the government and since the falsification of the public document is committed as a means to commit estafa, the proper charge is estafa through falsification of public documents.

- 257. Val, a Nigerian, set up a perfume business in the Philippines. The investors would buy the raw materials at a low price from Val. The raw materials consisted of powders, which the investors would mix with water and let stand until a gel was formed. Val made a written commitment to the investors that he would buy back the gel at a higher price, thus assuring the investors of a neat profit. When the amounts**

to be paid by Val to the investors reached millions of pesos, he sold all the equipment of his perfume business, absconded with the money, and is nowhere to be found. ^[L]^[SEP]What crime or crimes were committed, if any? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

The crime committed is estafa through false pretenses (*Art. 315 par. 2(a)*) was committed.

Val defrauded the investors by falsely pretending to possess business or imaginary transactions. The fact that he sold all the equipment of his perfume business and absconded with the money when the amounts to be paid by him to the investors reached millions of pesos shows that his business or the transactions are imaginary, and he defrauded the victims.

258. Domingo is the caretaker of two (2) cows and two (2) horses owned by Hannibal. Hannibal told Domingo to lend the cows to Tristan on the condition that ^[L]^[SEP]the latter will give a goat to the former when the cows are returned. Instead, Tristan sold the cows and pocketed the money. Due to the neglect of Domingo, one of the horses was stolen. Knowing that he will be blamed for the loss, Domingo slaughtered ^[SEP]the other horse, got the meat, and sold it to Pastor. He later reported to Hannibal that ^[SEP]the two horses were stolen. (2016 Bar Question)

A) What crime or crimes, if any, did Tristan commit? Explain.

B) What crime or crimes, if any, were committed by Domingo? Explain.

SUGGESTED ANSWER:

- A) Tristan is liable for Estafa through Misappropriation under Article 315 of the Revised Penal Code.

He received the cows under obligation to return the same thing, and acquired legal or juridical possession in so doing, being a commodatum, and when he sold the cows as if he owned it, constitutes misappropriation or conversion.

Domingo is liable for qualified theft under Article 308 of the Revised Penal Code.

- B) Although Tristan received the horse with the consent of the owner Hannibal, his possession is merely physical or de facto. Slaughtering the horse, and selling its meat to Pastor shall be considered as taking without consent of the owner with intent to gain. Since the horse is accessible to him, the theft is qualified by the circumstance of abuse of confidence.

Further, Domingo committed the crime of violation of the Anti-Cattle Rustling Law of 1974 (P.D. No. 533). Cattle rustling is the taking away by any means, method or scheme, without the consent of the owner/raiser, of large cattle, which includes cows and horses, whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat or hide without the consent of the owner/raiser.

259. Dora gave Elen several pieces of jewelry for sale on commission basis. They agreed that Elen would remit the proceeds of the sale and return the unsold items to Dora within sixty days. The period expired without Elen remitting the proceeds of the sale or returning the pieces of jewelry. Dora demanded by phone that Elen turn over the proceeds of the sale and return the unsold pieces of jewelry. Elen promised to do so the following day. Elen still failed to make good on her promise but instead issued post-dated checks. Thereafter, Dora made several more demands, the last of which was in writing, but they were all unheeded. When the checks were deposited in Dora's bank account, the checks were returned unpaid for insufficient funds. Elen was charged with estafa and violation of Batas Pambansa Blg. 22. Will the charges against Elen prosper? Explain.

SUGGESTED ANSWER:

Yes, the charges will prosper. Elen committed Estafa through Misappropriation punished under Art. 315, par. 1(b) of the Revised Penal Code because she received the pieces of jewelry on commission, for the purpose of selling, and remitting to Dora the proceeds thereof, and failed to return or remit the same lapse of the period agreed upon. Elen's failure to return within such period agreed upon is a presumption of misappropriation of the jewelry. Thus, there would be no more need to present any act of misappropriation.

In issuing the unfunded checks, Elen is also liable for several counts of violation of Batas Pambansa Blg. 22 or the Bouncing Checks Law.

260. Dela convinced Nita to work in Taiwan, promising Nita that she would take care of the processing of the necessary documents. Dela collected P120,000.00 from Nita purportedly for the processing of her papers. Upon receipt of the money, Nita was made to accomplish certain forms and was told that she would be deployed to Taiwan within one month. After one month, Nita followed up on her application. Dela made some excuses and told Nita that the deployment would be delayed. Another month passed and Dela made other excuses which made Nita suspicious. Nita later discovered that Dela was not licensed to recruit. Nita confronted Dela and demanded the return of her money. Dela promised to return the same in a week's time. (2015 Bar Question)

- A) A week later, Dela was nowhere to be found. What crime(s) did Dela commit? Explain.**
- B) Will your answer still be the same, assuming that the promise to deploy for employment abroad was made by Dela to Celia, Digna and Emma, in addition to Nita, and from whom Dela also collected the same amount of processing fee? Explain.**

SUGGESTED ANSWER:

- A) The separate crimes of estafa through falsification of public documents and illegal recruitment were committed by Dela.

In this case, Dela defrauded Nita by leading her to believe that she has the capacity to send her to Taiwan for work, even though she does not have a license or authority for the purpose. Such misrepresentation came before Nita gave Dela P120,000.00 for the processing of her papers. Clearly, Nita would not have parted with her money were it not for such enticement by Dela. As a consequence of Dela's false pretenses, Nita suffered damages as the promised employment abroad never materialized and the money she paid was never recovered.

Since Dela has no license to recruit, the crime of illegal recruitment is also committed.

- B) Yes, Dela shall be liable for both Estafa under Par 2(a) of Art. 315 of the RPC and Illegal Recruitment, but in large-scale. Illegal recruitment is deemed committed in large scale if committed against 3 or more persons individually or as a group. In this case there are at least 3 victims, Celia, Digna, Emma, and Nita.

261. Bruno, a taxi driver, had an indebtedness in the sum of P10,000.00 which would become due in one week. He was starting to worry because he still had not raised the amount to pay for his debt. Every day, he had prayed for divine intervention. One night, while returning the taxi to the garage, he found a wallet on the back seat. Inspecting it, he learned that it contained exactly P10,000.00 cash, the amount of his obligation, and IDs. Thinking it was divine intervention, and that his prayers were answered, he took the money and used it to pay his debt. (2015 Bar Question)

- A) What crime, if any, did Bruno commit? Explain.**

- B) Assuming that instead of using the money, Bruno turned over the wallet and its contents to the nearby police station, and it was the chief of police of that station who appropriated the money for his own benefit, what crime was committed by the chief of police? Explain.**

SUGGESTED ANSWER:

- A) Bruno committed the crime of theft. Failure to deliver to the local authorities or to its owner the lost property which he found constitutes theft.
- B) The chief of police is liable for theft. Although he is not the one who found the property, he is considered as finder in law since the property was surrendered to him by the actual finder (People v. Avila, G.R. No. L-19786, 31 March 1923).

- 262. Madam X, a bank teller, received from depositor Madam Y a check payable to cash in the amount of P1 million, to be deposited to the account of Madam Y. Because the check was not a crossed check, Madam X credited the amount to the account of her good friend, Madam W, by accomplishing a deposit slip. Seven (7) days after, Madam X contacted her good friend, Madam W and told her that the amount of P1 million was wrongfully credited to Madam W, thus, Madam X urged Madam W to withdraw the amount of P1 million from her account and to turn over the same to Madam X. As a dutiful friend, Madam W readily acceded. She was gifted by Madam X with an expensive Hermes bag after the withdrawal of the amount.**

What crime/s, if any, did Madam X and Madam W commit? Explain. (2014 Bar Question)

SUGGESTED ANSWER:

Madam X shall be liable as principal in the crime of qualified theft committed with grave abuse of confidence defined and punishable under Article 310 of the Revised Penal Code.

Being a bank teller, she had only the physical possession, not juridical possession of the money received by her. Consequently, her subsequent misappropriation of the same shall constitute the crime of theft, qualified with grave abuse of confidence.

Madam W, on the other hand, is not criminally liable. She had no knowledge of the crime and withdrew the money from her account and turned over the same to Madam X because of the misrepresentation of the latter that the P1 million was wrongfully deposited to her account. Her participation is not based on conspiracy or community of design, without which she cannot be held liable as principal.

Receiving an expensive Hermes bag from Madam X will not make Madam W liable as an accessory since the latter has no actual knowledge of the commission of the crime of theft by the former and the bag cannot be considered as the "effects of the crime" since there is no showing that the money withdrawn was used in buying it.

- 263. A was caught peeping through a small hole in the bathroom door while a young 16-year-old lady was taking a bath. A is liable for: (2014 Bar Question)**

- A) Violation of R.A. 9262 or Violence Against Women and their Children
- B) Violation of R.A. 7610, Child Abuse Law
- C) Light coercion
- D) Acts of lasciviousness

SUGGESTED ANSWER: C.

264. Malo, a clerk of court of a trial court, promised the accused in a drug case pending before the court, that he would convince the judge to acquit him for a consideration of P5 million. The accused agreed and delivered the money, through his lawyer, to the clerk of court.

The judge, not knowing of the deal, proceeded to rule on the evidence and convicted the accused. (2014 Bar Question)

- A) Malo was charged with violation of Section 3(b), RA 3019, which prohibits a public officer from directly or indirectly requesting or receiving any gift, present, share percentage or benefit wherein the public officer, in his official capacity, has to intervene under the law. He was later charged also with indirect bribery under the Revised Penal Code. Malo claims he can no longer be charged under the Revised Penal Code for the same act under R.A. 3019. Is he correct?
- B) Malo was charged with estafa under Article 315 because he misrepresented that he had influence, when he actually had none. Is the charge correct?

SUGGESTED ANSWER:

- A) No. Malo is not correct. One may be charged with violation of RA 3019 in addition to a felony under the RPC for the same act. This is expressly provided for in Section 3, RA 3019 which states: "In addition to acts or omissions of public officers already penalized by existing laws, the following shall constitute corrupt practices of public officers and hereby declared to be unlawful: xxx" Moreover, elements of RA 3019 are not the same as those penalized under the RPC.
- B) Yes, the charge is correct. Estafa is committed by any person who shall ask money from another for the alleged purpose of bribing a government employee when in truth the offender intended to convert the money for his own personal use and benefit.
265. Mr. Benjie is the owner of a hardware store specializing in the sale of plumbing materials. On February 1, 2014, Mr. Ed, a friend and regular customer of Mr. Benjie, visited the hardware store and purchased several plumbing materials in the total amount of P5 million. Mr. Benjie readily accepted Mr. Ed's payment of three (3) postdated checks in the amount of P1 million Pesos each in view of the assurance of Mr. Ed that the checks will be honored upon presentment for payment. Mr. Benjie, as a consequence, immediately delivered the materials to the house of Mr. Ed. The following day, Mr. Ed went back to Mr. Benjie to tender another two (2) postdated checks in the amount of P1 million each to complete the payment, with the same assurance that the checks will be honored upon presentment for payment. When the checks were presented for payment, all were dishonored for insufficiency of funds and corresponding notices of dishonor were sent and received by Mr. Ed. One month after receipt of the notices of dishonor, Mr. Ed failed to make good the checks. Thereafter, Mr. Benjie filed before the public prosecutor's office a complaint against Mr. Ed, although no demand letter was earlier sent to Mr. Ed.

During the preliminary investigation, Mr. Benjie accepted several amounts from Mr. Ed as partial payments. The wife of Mr. Benjie protested and insisted that the complaint should continue despite the partial payments. On the other hand, Mr. Ed counters that no demand letter was earlier sent to him, that the obligation is merely civil in character and that novation took place when Mr. Benjie accepted the partial payments.

Discuss the criminal liability, if any, of Mr. Ed. (2014 Bar Question)

SUGGESTED ANSWER:

Mr. Ed is liable of one count of Estafa under Article 315(2)(d) for the issuance of the first 3 checks because he issued them simultaneously with the transaction in order to defraud another. The 2 other checks were issued in payment of a pre-existing obligation, and therefore, estafa is not committed.

Mr. Ed is also liable of 5 counts of violation of BP Blg. 22 for the issuance of the 5 checks which were dishonored for insufficiency of funds. The gravamen of BP 22 is the issuance of a worthless or bum check; deceit/fraud is not an element.

Mr. Ed's defense of partial payments constituting novation and absence of demand letter will not free him from the criminal liability already incurred. The partial payments would only affect his civil liability while his claim of absence of demand letter is negated by the receipt of the notice of dishonour.

- 266. Clepto went alone to a high-end busy shop and decided to take one of the smaller purses without paying for it. Overcome by conscience, she decided to leave her own purse in place of the one she took. Her act was discovered and Clepto was charged with theft. She claimed that there was no theft, as the store suffered no injury or prejudice because she had left a purse in place of the one she took. Comment on her defense. (2014 Bar Question)**

SUGGESTED ANSWER:

The defense of Clepto has no merit. Theft is already consummated from the moment Clepto took possession of one of the smaller purses inside a high-end shop, without paying for it. She took the personal property of another, with intent to gain, without the consent of the latter. Damage or injury to the owner is not an element of theft, hence, even if she left her purse in lieu of the purse she took, theft is still committed.

- 267. Mr. Gray opened a savings account with Bank A with an initial deposit of P50,000.00. A few days later, he deposited a check for P200,000.00 drawn from Bank B and endorsed by Mr. White. Ten days later, Mr. Gray withdrew the P200,000.00 from his account. Mr. White later complained to Bank B when the amount of P200,000.00 was later debited from his account, as he did not issue the check and his signature thereon was forged. Mr. Gray subsequently deposited another check signed by Mr. White for P200,000.00, which amount he later withdrew. Upon receiving the amount, Mr. Gray was arrested by agents of the National Bureau of Investigation (NBI). Mr. Gray was convicted of estafa and attempted estafa, both through the use of commercial documents. (2014 Bar Question)**

- A) Mr. Gray claims as defense that, except for Mr. White's claim of forgery, there was no evidence showing that he was the author of the forgery and Mr. White did not suffer any injuries as to the second check (attempted estafa). Rule on the defense of Mr. Gray.**
- B) Mr. Gray claims that he was entrapped illegally because there was no showing that the second check was a forgery and, therefore, his withdrawal based on the second check was a legal act. Is Mr. Gray correct?**

SUGGESTED ANSWER:

- A) The first defense of Mr. Gray has no merit. The law presumes that the possessor and user of a falsified document is the falsifier or forger thereof. Likewise, his second defense that Mr. White did not suffer any injuries as to the second check has no merit. Damage or intent to cause damage is not considered in attempted estafa.**

- B) Mr. Gray is not correct. The fact that the first check is forged justifies the entrapment of Mr. Gray since there is already probable cause that the second check is also a forgery. Further, granting that the entrapment was illegal, his criminal liability in forging the second check is not affected by the alleged illegality of the entrapment procedure.

268. William is the son-in-law of Mercedes who owns several pieces of real property. In 1994, William's wife, Anita, died. In 1996, William caused the preparation of a Special Power of Attorney (SPA) giving him the authority to sell two (2) parcels of land registered in the name of Mercedes. The signature of Mercedes in the SPA was forged and, through this forged SPA and without the consent and knowledge of Mercedes, William succeeded in selling the two (2) parcels for Php 2,000,000. He pocketed the proceeds of the sale.

Mercedes eventually discovered William's misdeeds and filed a criminal complaint. William was subsequently charged with estafa through falsification of public document.

Was the criminal charge proper? (2013 Bar Question)

SUGGESTED ANSWER:

The criminal charge of estafa through falsification is correct. William forged the signature of his mother-in-law in the Special Power of Attorney, a public document, as a necessary means to sell her properties to third parties without delivering the proceeds thereof.

Their relationship under Article 332 (1) of the Revised Penal Code may not be considered as an absolutionary cause because the benefit of Article 332 is strictly limited to the simple crimes of theft, estafa and malicious mischief. It does not apply where any of the crimes mentioned is complexed with another crime.

269. Anthony drew a promissory note and asked his terminally-ill and dying business partner Ben to sign it. The promissory note bound Ben to pay Anthony One Million Pesos (P1,000,000) plus 12% interest, on or before June 30, 2011.

If Ben died before the promissory note's due date and Anthony still collected P1,000,000 with interest from Ben's estate, what crime/s did Anthony commit? (2013 Bar Question)

- A) Falsification of a public document.
- B) Falsification of a private document and estafa.
- C) Estafa.
- D) Estafa thru falsification of a private document.
- E) None of the above.

SUGGESTED ANSWER:

C. Article 315 of the Revised Penal Code provides that swindling or estafa may be committed "by inducing another, by means of deceit, to sign any document."

270. On June 1, 2011, Efren bought a used top-of-the-line Mercedes Benz for P7.5 Million from Switik Trading. On the same day, he paid P2,500,000 in cash and issued Switik Trading a check for P5,000,000 dated July 31, 2011. He then brought the car to a friend's house and hid it in an underground garage. The check Efren issued was dishonored for insufficiency of funds when presented for payment on due date. Efren was asked to honor and pay the check or to return the car, but he refused.

What crime/s did Efren commit? (2013 Bar Question)

- A) Carnapping.

- B) Estafa and carnapping.
- C) A violation of BP Blg. 22.
- D) Estafa and a violation of BP Blg. 22.
- E) None of the above.

SUGGESTED ANSWER: D.

271. Who among the following is liable for estafa? (2012 Bar Question)

- A) The seller of a laptop computer who failed to inform the buyer that the laptop had a defect.
- B) The person who ran away with a cell phone which was handed to him upon his pretense that he had to make an emergency call.
- C) The person who assured he will pay interest on the amount but failed to do so as promised.
- D) The son who induced his father to buy from him a land which the son is no longer the owner.

SUGGESTED ANSWER: A.

272. Is the crime of theft committed by a person who, with intent to gain, takes a worthless check belonging to another without the latter's consent? (2012 Bar Question)

- A) Yes. All the elements of the crime of theft are present: that there be taking of personal property; that the property belongs to another; and that the taking be done with intent to gain and without the consent of the owner.
- B) No. The taking of the worthless check, which has no value, would not amount to the crime of theft because of the legal impossibility to commit the intended crime.
- C) Yes. Theft is committed even if the worthless check would be subsequently dishonored because the taker had intent to gain from the check at the time of the taking.
- D) Yes. Theft is committed because the factual impossibility to gain from the check was not known to the taker or beyond his control at the time of taking.

SUGGESTED ANSWER: B. (People v. Jacinto, G.R. No. 162540, 13 July 2009)

273. What crime is committed by one who defrauds another by taking undue advantage of the signature of the offended party in a blank check and by writing the payee and amount of the check to the prejudice of the offended party? (2012 Bar Question)

- A) estafa with unfaithfulness or abuse of confidence;
- B) estafa by false pretense;
- C) estafa through fraudulent means;
- D) estafa by other deceits.

SUGGESTED ANSWER:

A. Estafa is committed by a person who shall defraud another with unfaithfulness or abuse of confidence by taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank.

274. What crime is committed by one who, having received money, goods or any other personal property in trust or on commission, or for administration, defrauds the offended party by denying receipt of such money, goods or other property? (2012 Bar Question)

- A) He commits violation of the Trust Receipt Law.
- B) He commits estafa through fraudulent means.
- C) He commits estafa by false pretenses.
- D) He commits estafa with unfaithfulness or abuse of confidence.

SUGGESTED ANSWER:

D. Estafa is committed by person who shall defraud another with unfaithfulness or abuse of confidence by denying having received money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same.

275. What is the criminal liability of a person who knowingly and in any manner aids or protects highway robbers/brigands by giving them information about the movement of the police? (2012 Bar Question)

- A) He is criminally liable as principal by indispensable cooperation in the commission of highway robbery or brigandage.
- B) He is criminally liable as an accessory of the principal offenders.
- C) He is criminally liable as an accomplice of the principal offenders.
- D) He is criminally liable as principal for aiding and abetting a band of brigands.

SUGGESTED ANSWER: C. (Section 4 of P.D. No. 532)

276. RR convinced WW to take a job in Taiwan, assuring her of a good salary and entitlement to a yearly vacation.

WW paid to RR the processing fee for passport and visa, but no receipt was issued for the payment. WW was made to use the alien certificate of registration of another person with a Chinese name and instructed on how to use the Chinese name. The application of WW was rejected by the Taiwanese authorities. Cases were filed against RR for illegal recruitment and estafa. The case of illegal recruitment was dismissed. Is RR liable for estafa? (2012 Bar Question)

- A) RR is liable for estafa with unfaithfulness or abuse of confidence.
- B) RR is liable for estafa by means of false pretenses.
- C) RR is not liable for estafa because WW participated in the illegal travel documents.
- D) RR can no longer be held liable for estafa because with the dismissal of the case against him for illegal recruitment, double jeopardy has already set in.

SUGGESTED ANSWER:

B. RR is liable for estafa by means of false pretense. RR misrepresented and falsely pretended that she had the capacity to deploy WW for employment in Taiwan. The misrepresentation was made prior to the payment for processing fee. As a result of RR's false pretenses and misrepresentations, WW suffered damages as the promised employment abroad never materialized and the money she paid was never recovered.

The fact that WW actively participated in the processing of the illegal travel documents will not exculpate RR from liability. WW was forced to take part in the processing of the falsified travel documents because she had already paid the processing fee.

Illegal recruitment and estafa cases may be filed simultaneously or separately. The filing of charges for illegal recruitment does not bar the filing of estafa, and vice versa. Illegal recruitment and estafa are entirely different offenses and neither one necessarily includes or necessarily included in the other.

277. What crime is committed by a person who, having found a ring, fails to deliver the same to the owner or to the local authorities? (2012 Bar Question)

- A) The finder commits theft.
- B) The finder commits concealment.
- C) The finder commits qualified theft.
- D) The finder commits usurpation of property.

SUGGESTED ANSWER: A.

278. At a wake, there were people watching a game of dice. With treachery and use of unlicensed firearms, AA fired successively several gunshots at their direction. During the shooting, four (4) persons were killed and fourteen (14) others were injured and brought to the hospital for the treatment of gunshot wounds. What should be the proper charge against AA? (2012 Bar Question)
- A) AA should be charged with multiple murder and attempted murder.
 - B) AA should be charged with four (4) counts of murder and fourteen (14) counts of attempted murder.
 - C) AA should be charged with four (4) counts of murder, fourteen (14) counts of serious physical injuries and illegal possession of firearms.
 - D) AA should be charged with complex crime of murder and attempted murder with illegal possession of firearms.

SUGGESTED ANSWER:

C. Article 48 of the Revised Penal Code refers to cases where “a single act constitutes two or more grave felonies”. A complex (compound) crime refers to singularity of criminal act. When one fires his firearm in succession, killing and wounding several persons, the different acts must be considered as distinct crimes. When various victims expire from separate shots, such acts constitute separate and distinct crimes. He also committed the crime of Illegal possession of firearms, which is a separate and distinct offense.

279. Which of the following acts does not constitute estafa or other forms of swindling? (2012 Bar Question)
- A) When a person mortgages a real property by pretending to be the owner thereof.
 - B) When a person disposes of the real property knowing it to be encumbered.
 - C) When a person wrongfully takes real property from its lawful possessor to the prejudice of the latter.
 - D) When a person mortgages real property while being a surety given in a civil action without express authority from the court.

SUGGESTED ANSWER:

C. Swindling under Article 316 is committed by the owner of any “personal property” who shall wrongfully take it from its lawful possessor, to the prejudice of the latter.

280. DD, intending to kill EE, peppered the latter's bedroom with bullets, but since the intended victim was not home at that time, no harm came to him. What crime is committed? (2012 Bar Question)
- A) DD committed the crime of attempted murder.
 - B) DD committed the crime of attempted homicide.
 - C) DD committed the crime of impossible crime.
 - D) DD committed the crime of malicious mischief.

SUGGESTED ANSWER:

C. In *Intod v. CA*, GR No. 103119, October 21, 1992, the Supreme Court held that an accused is guilty of an impossible crime if the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment.

281. With intent to cause damage, AAA deliberately set fire upon the two-storey residential house of his employer, mostly made of wooden materials. The blaze spread and gutted down seven neighboring houses. On the occasion of the fire, six (6) persons sustained burn injuries which were the direct cause of their death. What crime was committed by AAA? (2012 Bar Question)

- A) AAA committed the complex crime of arson with multiple homicide.
- B) AAA committed arson and multiple homicide.
- C) AAA committed simple arson.
- D) AAA committed arson and multiple murder.

SUGGESTED ANSWER:

C. If the main objective of the offender is the burning of the building or office, but death results by reason or on the occasion of arson, the crime is simply arson. The resulting homicide is absorbed.

282. What crime is committed by a utility worker in government who destroys office files as an act of revenge against his supervisor? (2012 Bar Question)

- A) The utility worker commits infidelity in the custody of papers.
- B) The utility worker commits malicious mischief.
- C) The utility worker commits estafa by removing, concealing or destroying office files.
- D) The utility worker commits crime involving destruction.

SUGGESTED ANSWER:

B. The crime committed by the worker is malicious mischief and said crime is committed by a person who shall deliberately cause to the property of another any damage which does not constitute arson (Article 327, Revised Penal Code).

283. Who are brigands? (2012 Bar Question)

SUGGESTED ANSWER:

When more than three armed persons form a band of robbers for the purpose of committing robbery in the highway, or kidnapping persons for the purpose of extortion or to obtain ransom, for any other purpose to be attained by means of force and violation, they shall be deemed highway robbers or brigands (Article 306, RPC).

284. Distinguish brigandage from robbery in band as to elements, purpose of the offender and agreement among the offenders. (2012 Bar Question)

SUGGESTED ANSWER:

The main object of the Brigandage Law is to prevent the formation of bands of robbers, while in robbery in a band, the main objective is to commit robbery which may not be necessarily carried out in a highway.

The agreement of the accused in brigandage pertains to the commission of the robbery in the highway. Meanwhile, in robbery in a band the agreement is limited to a particular robbery.

285. A postal van containing mail matters, including checks and treasury warrants, was hijacked along a national highway by ten (10) men, two (2) of whom were armed. They used force, violence and intimidation against three (3) postal employees who were occupants of the van, resulting in the unlawful taking and transportation of the entire van and its contents.

If you were the defense counsel, what are the elements of the crime of highway robbery that the

prosecution should prove to sustain a conviction? (2012 Bar Question)**SUGGESTED ANSWER:**

Under Section 2 of P.D. 532, highway robbery is defined as the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine highway. Hence, the elements of highway robbery are:

- a) Intent to gain;
- b) Unlawful taking of property of another;
- c) Violence against or intimidation of any person;
- d) Committed on a Philippine highway;
- e) Indiscriminate victim

To obtain a conviction for highway robbery, the prosecution must prove that the accused were organized for the purpose of committing robbery indiscriminately.

286. Is the crime of theft susceptible of commission in the frustrated stage? Explain your answer in relation to what produces the crime of theft in its consummated stage and by way of illustration of the subjective and objective phases of the felony. (2012 Bar Question)

SUGGESTED ANSWER:

No, the crime of theft is not susceptible to a frustrated stage. Unlawful taking is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all. Theft can only be attempted or consummated. (Valenzuela v. People of the Philippines, G. R. No. 160188, 21 June 2007)

287. Isabel, a housemaid, broke into a pawnshop intent on stealing items of jewelry in it. She found, however, that the jewelry were in a locked chest. Unable to open it, she took the chest out of the shop. What crime did she commit? (2011 Bar Question)

- A) Robbery in an uninhabited place or in a private building
- B) Theft
- C) Robbery in an inhabited house or public building.
- D) Qualified theft

SUGGESTED ANSWER: A.

288. There is violation of Art. 316, RPC (Other forms of Swindling) where: (2011 Bar Question)

- A) the owner of property sells a property and subsequently rescinds the sale.
- B) the real property subject of the sale does not exist.
- C) the property was mortgaged for a usurious contract of loan.
- D) the owner disposes of his encumbered real property as if it is free from encumbrances.

SUGGESTED ANSWER: D.

289. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner is liable for: (2011 Bar Question)

- A) occupation or usurpation of personal property.
- B) civil damages only.
- C) theft.

D) other deceptions.

SUGGESTED ANSWER: C.

290. X draws a check upon request of Y, the payee, who told X that he would merely show the check to his creditor to gain more time to pay his account. The check bounced upon presentation by the creditor. Under the circumstances, who can be prosecuted for estafa based on the dishonored check? (2011 Bar Question)
- A) Y as the one who negotiated the check contrary to the agreement
 - B) X as the drawer of the check
 - C) Both X and Y based on conspiracy
 - D) None

SUGGESTED ANSWER: A.

291. The crime of robbery in an inhabited house or public building is mitigated when the offenders: (2011 Bar Question)
- A) entered the house using false keys.
 - B) although armed did not fire their weapons.
 - C) entered through a window without breaking it.
 - D) although armed took property valued at only P200.

SUGGESTED ANSWER: D.

292. Which among the following circumstances do NOT qualify the crime of kidnapping? (2011 Bar Question)
- A) The victim is killed as a consequence of the detention.
 - B) The offender is a public officer.
 - C) Ransom is demanded.
 - D) The victim is raped.

SUGGESTED ANSWER: B.

293. A criminal action for rape is extinguished when the offender is forgiven by: (2011 Bar Question)
- A) the offender's wife who herself is the rape victim.
 - B) his wife for having raped another woman.
 - C) the rape victim's husband.
 - D) the rape victim herself.

SUGGESTED ANSWER: A.

294. Christopher, John, Richard, and Luke are fraternity brothers. To protect themselves from rival fraternities, they all carry guns wherever they go. One night, after attending a party, they boarded a taxicab, held the driver at gunpoint and took the latter's earnings.

What crime, if any, did the four commit? Enumerate the elements of the crime. (2010 Bar Question)

SUGGESTED ANSWER:

The crime committed is robbery by a band since there were four (4) offenders acting in concert in committing the robbery and all the four were armed. The elements of this crime are:

- 1) Unlawful taking of personal property belonging to another (the earnings of the taxi-driver);

- 2) Intent to gain in the taking (of the earnings which belong to the taxi-driver);
- 3) Violence against or intimidation of person or force upon things was employed in the taking; and
- 4) There were more than three armed malefactors taking part in the commission of the robbery (Art. 296 in relation to Art. 294, Revised Penal Code)

295. Christopher, John, Richard, and Luke are fraternity brothers. To protect themselves from rival fraternities, they all carry guns wherever they go. One night, after attending a party, they boarded a taxicab, held the driver at gunpoint and took the latter's earnings.

Would your answer be the same if they killed the driver? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, the crime becomes robbery with homicide and all the fraternity brothers are liable. The existence of a band shall be appreciated only as generic aggravating circumstance. Also, if the firearms used were unlicensed, they would be liable for illegal possession of loose firearms under Section 29 of R.A. No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act.

296. Paul lives with his long-time girlfriend Joan in a condominium in Makati. For more than a year, he has been secretly saving money in an envelope under their bed to buy her an engagement ring. One day, while Joan was cleaning their room, she found the envelope, took the money, and left Paul. As prosecutor, what crime, if any, would you charge Joan? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Joan may be charged of qualified theft because she took away personal property belonging to Paul without the latter's consent, with intent to gain, and with grave abuse of confidence.

297. The president, treasurer, and secretary of ABC Corporation were charged with syndicated estafa under the following Information:

That on or about the 1st week of January 2010 or subsequent thereto in Cebu City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another in a syndicated manner, through a corporation registered with the Securities and Exchange Commission (SEC), with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, with intent to gain and by means of fraud and deceit, did then and there willfully, unlawfully, and feloniously defraud Virna, Lana, Deborah and several other persons, by falsely or fraudulently pretending or representing in a transaction or series of transactions, which they made with complainants and the public in general, to the effect that they were in a legitimate business of foreign exchange trading successively or simultaneously operating under the name and style of ABC Corporation and DEF Management Philippines, Incorporated, induced and succeeded in inducing complainants and several other persons to give and deliver to said accused the amount of at least P20,000,000.00 on the strength of said manifestations and representations, the accused knowing fully well that the abovenamed corporations registered with the SEC are not licensed nor authorized to engage in foreign exchange trading and that such manifestations and representations to transact in foreign exchange were false and fraudulent, that these resulted to the damage and prejudice of the complainants and other persons, and that the defraudation pertains to funds solicited from the public in general by such corporations/associations.

Will the case for syndicated estafa prosper? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, the case for syndicated estafa will not prosper. Presidential Decree No. 1689 provides that in order to be convicted of the crime syndicated estafa, there must be five (5) or more persons who shall commit the crimes defined in Arts. 315 and 316 of the Revised Penal Code. In this case, there are only three (3) persons who conspired in the commission of the swindling. However, considering that amount defrauded exceeds P100,000.00, the case is still penalized under P.D. 1689, with a lower penalty than syndicated estafa.

- 298. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.**

A person who, on the occasion of a robbery, kills a bystander by accident is liable for two separate crimes: robbery and reckless imprudence resulting in homicide. (2009 Bar Question)

SUGGESTED ANSWER:

False. Only one crime of robbery with homicide is committed. The Revised Penal Code punishes the crime as only one indivisible offense when a killing, whether intentional or accident, was committed by reason or on occasion of a robbery (Art. 294[1], RPC).

- 299. Angelo devised a Ponzi Scheme in which 500 persons were deceived into investing their money upon a promise of a capital return of 25%, computed monthly, and guaranteed by post-dated checks. During the first two months following the investment, the investors received their profits, but thereafter, Angelo vanished.**

Angelo was charged with 500 counts of estafa and 2,000 counts of violation of Batas Pambansa (BP) 22. In his motion to quash, Angelo contends that he committed a continued crime, or delito continuado, hence, he committed only one count of estafa and one count of violation of BP 22.

Is Angelo's contention tenable? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, Angelo's contention is not tenable.

Angelo acted with separate fraudulent intent in each swindling and issuing each of check. It cannot be maintained that his acts are the product of one criminal resolution only. Moreover, his drawing of separate checks payable to each payee is a separate criminal resolution.

Thus, Angelo committed as many counts of estafa against the 500 victims and 2,000 counts of violation of BP 22, since each swindling is achieved through distinct fraudulent machinations contrived at different time or dates, and in different amounts.

- 300. While Alfredo, Braulio, Ciriaco, and Domingo were robbing a bank, policemen arrived. A firefight ensued between the bank robbers and the responding policemen, and one of the policemen was killed.**

What crime or crimes, if any, had been committed? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

The crimes committed by Alfredo, Braulio, Ciriaco and Domingo were Robbery with Homicide (Art. 294[1], RPC), a single indivisible offense, and Direct Assault with Multiple Attempted Homicide, a complex crime (Art. 48, Art. 148 and Art. 249).

Robbery with Homicide was committed because one of the responding policeman was killed by reason or on occasion of the robbery being committed. The complex crime of Direct Assault with Multiple Attempted Homicide was committed in respect to the offenders' firing of guns at the responding policemen who are agents of person in authority who were performing their duty when the shots were fired.

301. While Alfredo, Braulio, Ciriaco, and Domingo were robbing a bank, policemen arrived. A firefight ensued between the bank robbers and the responding policemen, and one of the policemen was killed.

Suppose it was Alfredo who was killed by the responding policemen, what charges can be filed against Braulio, Ciriaco and Domingo? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Braulio, Ciriaco and Domingo can still be charged of the crime Robbery with Homicide (Art. 249[1], RPC), since the killing resulted by reason or on occasion of the robbery. It is of no moment that the person killed is one of the robbers. A killing by reason or on occasion of the robbery, whether deliberate or accidental, will be a component of the crime of Robbery with Homicide, a single indivisible offense, as long as it is immediately connected to the robbery.

302. While Alfredo, Braulio, Ciriaco, and Domingo were robbing a bank, policemen arrived. A firefight ensued between the bank robbers and the responding policemen, and one of the policemen was killed.

Suppose in the course of the robbery, before the policemen arrived, Braulio shot and killed Alfredo following a heated disagreement on who should carry the money bags, what would be the criminal liability of Braulio, Ciriaco and Domingo? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

Braulio is liable for Robbery with Homicide for killing Alfredo, since the killing was committed by reason of the robbery. (Art. 294[1], RPC)

Meanwhile, Ciriaco and Domingo conspired only in the commission of the robbery. Thus, they should only incur criminal liability for the crime robbery, unless they were with Braulio during the killing and they could have prevented the same.

303. Eman, a vagrant, found a bag containing identification cards and a diamond ring along Roxas Blvd. Knowing that it was not his, he went to a nearest police station to seek help in finding the owner of the bag. At the precinct PO1 Melvin attended to him. In the investigation Eman proposed to PO1 Melvin, "in case you don't find the owner let's just pawn straight to the pawnshop and pawned the ring for P50,000.00 Eman never saw PO1 Melvin again.

What is the criminal liability of Eman, If any? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

Eman has no criminal liability. The fact alone that he suggested to PO1 Melvin an improper proposal does not make Eman criminally liable. It must be noted that there was no overt act on the part of Eman.

- 304. Lucas had been the stay-in houseboy of spouses Nestor and Julia for Five Years. One Night, while Nestor and Julia were out having dinner, Lucas and his friend Pedro gained entry into the masters' bedroom with the used of a false key. They found Julia's jewelry box in one of the cabinets which was unlocked. Lucas believed that Julia's jewelry inside the box. Unknown to Lucas and Pedro, the box was empty. Pedro took the box and left the bedroom with Lucas. They were shock when they saw Nestor in the sala, pointing a gun at them. Nestor ordered them to stop and hand over the box. Pedro complied. It turned out that Nestor had just arrived in time to see Lucas and Pedro leaving the master's bedroom with the box.**

State with reasons, the crime or crimes, if any, Lucas and Pedro committed. (2008 Bar Question)

SUGGESTED ANSWER:

Lucas and Pedro committed Robbery in an Inhabited House (Art. 299) for gaining entry into the house by means of a false key.

- 305. Dennis leased his apartment to Myla for P10,000 a month. Myla failed to pay the rent for 3 months. Gabriel, the son of Dennis, prepared a demand letter falsely alleging that his father had authorized him to collect the unpaid rentals. Myla paid the unpaid rentals to Gabriel who kept the payment.**

Did Gabriel commit a crime? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

Yes, Gabriel committed the crime of Estafa under Art. 315, par. 2(a) of the Revised Penal Code (RPC). To be convicted under said provision of the RPC, it is necessary that false pretense must be made or executed prior or simultaneously with the commission of the fraud. In this case, Gabriel pretended to be an agent of his father to be able to collect the unpaid rentals of Myla. Thus, Gabriel is guilty of the crime Estafa under Article 315, par. 2(a) of the RPC.

- 306. Dennis leased his apartment to Myla for P10,000 a month. Myla failed to pay the rent for 3 months. Gabriel, the son of Dennis, prepared a demand letter falsely alleging that his father had authorized him to collect the unpaid rentals. Myla paid the unpaid rentals to Gabriel who kept the payment.**

Can Gabriel invoke his relationship with Dennis to avoid criminal liability? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

No. Gabriel cannot invoke Art. 332, RPC (*Persons exempt from criminal liability*). It is Myla, not the father Dennis, who is the offended party under Art. 315 (2)(a).

- 307. Jervis and Marlon asked their friend, Jonathan, to help them rob a bank. Jervis and Marlon went inside the bank, but were unable to get any money from the vault because the same was protected by a time-delay mechanism. They contented themselves with the customer's cellphones and a total of P5,000 in cash. After they dashed out of the bank and rushed into the**

car, Jonathan pulled the car out of the curb, hitting a pedestrian which resulted in the latter's death.

What crime or crimes did Jervis, Marlon and Jonathan commit? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

Jervis, Marlon and Jonathan committed robbery with homicide, because there was conspiracy among them to commit the robbery and the death of the pedestrian was caused on the occasion of the robbery. Even though the death was accidental, it is enough that such death was caused by any of the robber's felonious act and on the occasion of the commission of the robbery.

308. Fe is the manager of a rice mill in Bulacan. In order to support a gambling debt, Fe made it appear that the rice mill was earning less than it actually was by writing in a "talaan" or ledger a figure lower than what was collected and paid by their customers. Fe then pocketed the difference. What crime/s did Fe commit, If any? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

Fe committed the crimes of: (a) estafa through abuse of confidence or unfaithfulness; and (b) falsification of a private document.

Damage or intent to cause damage, would sustain the case for estafa independently of the falsification of the commercial document. The crime of falsification of a commercial document has already been consummated and the use of said document to defraud another person would constitute estafa, which constitutes the damage.

In this case, two (2) separate crimes are committed; namely, estafa and falsification of the commercial document. The falsification should not be complexed with the estafa since it was not committed as a necessary means to commit the estafa.

J. Crimes against Chastity

309. Braulio invited Lulu, his 11-year old stepdaughter, inside the master bedroom. He pulled out a knife and threatened her with harm unless she submitted to his desires. He was touching her chest and sex organ when his wife caught him in the act. The prosecutor is unsure whether to charge Braulio for acts of lasciviousness^[1] under Art. 336 of the RPC, for lascivious conduct under RA 7610 (Special Protection against Child Abuse, Exploitation and Discrimination Act), or for rape under Art. 266-A of the RPC. What is the crime committed? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

Braulio's acts in touching the chest and sex organ of Lulu, who is under 12 years of age, constitute the crime of acts of lasciviousness and not attempted rape since the intent to have sexual intercourse is not clearly shown (*People v. Banzuela*, G.R. No. 202060, 11 December 2013). Likewise, Braulio's acts can be considered as sexual abuse under Section 5 (b) of RA No. 7610.

310. Filipino citizens Hector and Wendy were married in New York, and have been living happily in Manila for the last three years. Hector was removing junk from his basement when he came across an unlabeled recordable cd. He put it in his computer's DVD drive to check its contents. To his surprise, he saw a video of Wendy and another man Ariel, in the act of sexual intercourse in the master's bedroom of his house. Angered by what he saw, he filed a complaint for adultery against

Wendy and Ariel. During the course of the trial, and again to the surprise of Hector, it was proved that Wendy was born male and underwent sex reassignment later in life. (2015 Bar Question)

- A) May Hector's charge of adultery against Wendy and Ariel prosper? Explain.**
- B) What is an impossible crime? Can there be an impossible crime of adultery?**

SUGGESTED ANSWER:

- A) Yes, Hector's charge of adultery will prosper.

Adultery has the following elements: (1) the woman is married; (2) she has sexual intercourse with a man not her husband; (3) as regards the man with whom she has sexual intercourse, he must know her to be married.

In the case at hand, the discovery by Hector of the video of Wendy having sexual intercourse with another man, Ariel, is sufficient to charge his wife with Adultery. The fact that Wendy was later discovered by Hector to be born male who simply underwent sexual re-assignment later in life, is immaterial to the charge of Adultery considering that the marriage between the same sex is considered valid in the US where they were married.

- B) An impossible crime is an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means. There is no impossible crime of adultery since this is a crime against chastity, and not against person or property.

311. Using his charms because of his movie star looks, Phil, in a movie date with Lyn, a 19-year-old colegiala, kissed her on the cheek and stroked her pubic hair. Lyn shouted for help and Phil was arrested. Phil is liable for _____. (2013 Bar Question)

- A) rape by sexual assault for using his fingers**
- B) violation of the Anti-Child Abuse Law for lascivious conduct**
- C) unjust vexation**
- D) acts of lasciviousness**
- E) None of the above.**

SUGGESTED ANSWER: D.

312. Suspecting that her husband of twenty years was having an affair, Leilanie hired a private investigator to spy on him. After two weeks, the private investigator showed Leilanie a video of her husband having sexual intercourse with another woman in a room of a five-star hotel. Based on what she saw on the video, Leilanie accused her husband of concubinage.

Will the case of concubinage prosper? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, the case for concubinage will not prosper because said crime may be committed only by the husband in three (3) ways, to wit:

- 1) By keeping a mistress in the conjugal dwelling; or
- 2) By having sexual intercourse with a woman not his wife under scandalous circumstances; or
- 3) By cohabiting with a woman not his wife in any other place (Art. 334, RPC).

Leilanie's husband was not caught under the above circumstances. Thus, the prosecution for the crime of concubinage will not prosper.

313.What are the three (3) classes of offender in the crime of qualified seduction? Give an example of each. (2007 Bar Question)

SUGGESTED ANSWER:

The three (3) classes of offenders in the crime of qualified seduction are as follows:

- 1) Those who exercise moral influence over the victim, such as a priest who acts as spiritual adviser of the victim, or a teacher in the school where the victim is enrolled;
- 2) A brother or ascendant by consanguinity of the victim, such as her uncle; and
- 3) Those who are regarded as “domestic” in relation to the victim, enjoying the confidence and intimacy shared by members of the same household, such as household helpers and boarders living under the same roof and with same household as the victim.

K. Crimes against the Civil Status of Persons

314.What are the elements of the crime of bigamy? (2012 Bar Question)

SUGGESTED ANSWER:

The elements of bigamy are as follows: (1) the offender has been legally married; (2) the first marriage has not been legally dissolved, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead; (3) the offender contracts a subsequent marriage; and (4) the subsequent marriage would have been valid had it not been for the existence of the first.

315.If you were the judge in a bigamy case where the defense was able to prove that the first marriage was null and void or a nullity, would you render a judgment of conviction or acquittal? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

I will render a judgment of conviction. Proof that the first marriage is null and void is not a defense in bigamy. As long as the previous marriage was not lawfully dissolved or judicially declared as null and void, contracting a new marriage constitute bigamy.

316.Assuming the existence of the first marriage when accused contracted the second marriage and the subsequent judicial declaration of nullity of the second marriage on the ground of psychological incapacity, would you render a judgment of conviction or acquittal? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

I will render a judgment of conviction.

A declaration of the nullity of the second marriage on the ground of psychological incapacity is not material insofar as the State’s penal laws are concerned. Since a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of his second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy.

317.The prescriptive period for bigamy is 15 years counted from the date of the: (2011 Bar Question)

- A) discovery of the second marriage by the offended spouse.
- B) registration of the second marriage in the Local Civil Registry.

- C) celebration or solemnization of the second marriage.
- D) discovery of the second marriage by the authorities.

SUGGESTED ANSWER: A.

318. Raissa and Martin are married to each other but had been separated for the last five years. Raissa decided to wed Juan, her suitor, who had no inkling that she was married. Raissa and Juan accomplished an application for marriage license which they subscribed and swore to before the Local Civil Registrar. Raissa declared in the application that she is single. The marriage license was issued. In due time, the couple were married by the mayor. Raissa and Juan had their first sexual intercourse later in the evening.

What crime or crimes, if any, did Raissa commit? Explain briefly. (2008 Bar Question)

SUGGESTED ANSWER:

Raissa committed bigamy for contracting a second marriage while her first marriage is still subsisting (Art. 349, RPC). She is also guilty of perjury for making untruthful statements under oath or executing an affidavit upon a material matter, when she declared she was not married in the application for marriage license a public document (Art. 171, RPC). Lastly, she is also guilty of adultery (Art. 333, RPC) for having sexual intercourse with Juan although she is a married woman.

L. Crimes against Honor

319. A is the president of the corporate publisher of the daily tabloid, *Bulgar*; B is the managing editor; and C is the author/writer. In his column, *Direct Hit*, C wrote about X, the head examiner of the BIR-RDO Manila as follows:

"Itong si X ay talagang BUWAYA kaya ang logo ng Lacoste T shirt niya^{SEP} ay napaka suwapang na buwaya. Ang nickname niya ay si Atty. Buwaya. Ang PR niya ay 90% sa bayad ng taxpayer at ang para sa RP ay 10% lang. Kaya ang baba ng collection ng RDO niya. Masyadong magnanakaw si X at dapat tanggalin itong bundat na bundat na buwaya na ito at napakalaki na ng kurakot."

A, B and C were charged with libel before the RTC of Manila. The three (3) defendants argued that the article is within the ambit of qualified privileged communication; that there is no malice in law and in fact; and, that defamatory comments on the acts of public officials which are related to the discharge of their official duties do not constitute libel.

Was the crime of libel committed? If so, are A, B, and C all liable for the crime? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

Yes. The crime of libel was committed.

Fair comment on acts of public officers related to the discharge of their duties is a qualified privileged communication, hence, the accused can still be held liable for libel if actual malice is shown. In fair comment, actual malice can be established by showing that comment was made with knowledge that it was false or with reckless disregard of whether it was false or not.

In the case at the bar, the report made by C, in describing a lawyer in the BIR as corrupt cannot be considered as "fair" and "true" since he did not do research before making his allegations, and it has been shown that these allegations were baseless.

320. A, president of the publishing company, B, managing editor, and C, writer of the defamatory articles, are all liable for libel. Under Article 360 of the Revised Penal Code, the publisher, and editor of newspaper, shall be responsible for the defamations contained therein to the same extent. The law makes the publisher and editor liable for libel as if they were the author (*Tulfo v. People*, supra).

In his Answer to a complaint, Atty. Jose (counsel for the defendant) stated that Atty. Agrada (counsel for the plaintiff) is "bobo, inutile, good for nothing, stupid, and a menace to clients."

Can Atty. Jose be held criminally liable for libel? (2013 Bar Question)

- A) No, because an Answer to a complaint is a court pleading where communications made are privileged; the writer cannot be held liable for libel.
- B) Yes, because the statement casts aspersion on the character, integrity and reputation of Atty. Agrada as a lawyer and exposed him to public ridicule.
- C) Yes, although a court pleading is a privileged communication, malicious statements that are irrelevant and impertinent to the issue in the pleading may be libelous.
- D) Yes, there was a malicious intent to ridicule Atty. Agrada as a lawyer.
- E) No, because the statement is in a pleading, but Atty. Jose can be charged administratively for misconduct before the Supreme Court.

SUGGESTED ANSWER:

C. A pleading is absolutely privileged when the defamatory statement therein is legitimately related thereto, or so pertinent to the inquiry in the course of the trial (*People v. Sesbereno*, G.R. No. L- 62449, July 16, 1984). However, irrelevant and impertinent statements are not protected by the privileged-communication rule.

321. A, B, C and D are members of the police department of a municipality. Conspiring with one another, they arrested E without reasonable ground for the purpose of delivering him to the proper authorities by imputing to E the crime of bribery. While E was being investigated by A, B, C and D, one of them placed a marked five hundred peso bill, together with the money taken from E, to make it appear that E, an employee of the Office of the Local Civil Registrar, agreed to perform an act not constituting a crime in connection with the performance of E's duties, which was to expedite the issuance of a birth certificate. What is the crime committed by A, B, C and D? (2012 Bar Question)
- A) A, B, C and D committed incriminatory machination through unlawful arrest.
 - B) A, B, C and D committed intriguing against honor with unlawful arrest.
 - C) A, B, C and D committed slight illegal detention.
 - D) A, B, C and D committed corruption of public official.

SUGGESTED ANSWER:

A. A, B, C, and D are guilty of incriminatory machination through unlawful arrest. They unlawfully arrested the offended party because it was the only way that they could detain him and, in the process, commingle with the offended party's personal money the marked one 500 peso bill for purposes of incriminating him for the crime of corruption a public officer.

322. A police officer surreptitiously placed a marijuana stick in a student's pocket and then arrested him for possession of marijuana cigarette. What crime can the police officer be charged with? (2011 Bar Question)
- A) None, as it is a case of entrapment
 - B) Unlawful arrest
 - C) Incriminating an innocent person
 - D) Complex crime of incriminating an innocent person with unlawful arrest

SUGGESTED ANSWER: D.

323. Plaintiff X said in his civil complaint for damages that defendant Y, employing fraud, convinced him to buy a defective vehicle. Y filed a criminal action for libel against X for maliciously imputing fraud on him. Will the action prosper if it turns out that the civil complaint for damages was baseless? (2011 Bar Question)
- A) No, since pleadings filed in court are absolutely privileged.
 - B) No, since malice is not evident.
 - C) Yes, given the fact that the imputation of fraud was baseless.
 - D) Yes, parties must state the truth in their pleadings.

SUGGESTED ANSWER: A.

324. X, a tabloid columnist, wrote an article describing Y, a public official, as stupid, corrupt, and having amassed ill-gotten wealth. X relied on a source from Y's own office who fed him the information. Did X commit libel? (2011 Bar Question)
- A) Yes, since the article was libelous and inconsistent with good faith and reasonable care.
 - B) No, since X but made a fair commentary on a matter of public interest.
 - C) No, since X's article constitutes privileged communication.
 - D) No, since he wrote his article under the freedom enjoyed by the press.

SUGGESTED ANSWER: A.

325. The exchanges of highly offensive words between two quarrelling women in the presence of a crowd of people constitute: (2011 Bar Question)
- A) one count of grave slander against the woman who uttered the more insulting expressions.
 - B) grave slander against the woman who started it and light slander against the other woman.
 - C) two separate counts of light slander, one for each woman.
 - D) two separate counts of grave slander, one against each of them.

SUGGESTED ANSWER: C.

326. X, a court employee, wrote the presiding judge a letter, imputing to Y, also a court employee, the act of receiving an expensive gift from one of the parties in a pending case. Because of this, Y accused X of libel. Does Y need to prove the element of malice in the case? (2011 Bar Question)
- A) No, since malice is self-evident in the letter.
 - B) Yes, malice is not presumed since X wrote the letter to the presiding judge who has a duty to act on what it states.
 - C) No, since malice is presumed with respect to defamatory imputations.
 - D) Yes, since malice is not presumed in libel.

SUGGESTED ANSWER: B.

327. Sam wrote a letter to his friends stating that Judge Odon loves obscene magazines and keeps these in his desk. Charged with libel, can Sam present proof that Judge Odon indeed loves obscene magazines and keeps these in his desk? (2011 Bar Question)
- A) No, since the imputation is not related to the duties of a judge.
 - B) No, since Sam does not impute a crime to Judge Odon.
 - C) No, since Sam imputes the commission of a crime to Judge Odon.
 - D) Yes, since truth can be a valid defense in libel.

SUGGESTED ANSWER: B.

328. Angelina maintains a website where visitors can give their comments on the posted pictures of the goods she sells in her exclusive boutique. Bettina posted a comment that the red Birkin bag shown in Angelina's website is fake and that Angelina is known to sell counterfeit items.

Angelina wants to file a case against Bettina. She seeks your advice. What advice will you give her? (2010 Bar Question)

SUGGESTED ANSWER:

I will advise Angelina to file a criminal case against Bettina for libel. The crime of libel is committed, whether the imputation of a defect, status or condition is real or imaginary, if it publicly tends to discredit, dishonor or place in contempt or ridicule a particular person who is identified, the imputation is presumed by law to be malicious and thus penalized as libel under Article 355 of the Revised Penal Code.

329. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.

In the crime of libel, truth is an absolute defense. (2009 Bar Question)

SUGGESTED ANSWER:

False, Art. 361 of the RPC provides that proof of truth shall be admissible in libel cases only if the same imputes a crime or is made against a public officer with respect to fact related to the discharge of their official duties, and moreover must have been published with good motives and for justifiable ends. Hence, "truth" as a defense, on its own, is not enough.

M. Quasi-offenses (or Criminal Negligence)

330. After drinking a bottle of Jack Daniels, Jonjon drove his BMW sports car at high speed, rammed into a group of crossing pedestrians, and hit a traffic light post. The incident caused the death of one (1) pedestrian, serious injuries to three (3) others, and the destruction of the traffic light post.

If you were the prosecutor, what would you charge Jonjon? (2013 Bar Question)

- A) Homicide with serious physical injuries through simple negligence.
- B) Damage to property, serious physical injuries and homicide through reckless negligence.
- C) Simple negligence resulting in damage to property, serious physical injuries and homicide.
- D) Reckless imprudence resulting in homicide, serious physical injuries and damage to property.

SUGGESTED ANSWER: D.

331. AB was driving a van along a highway. Because of her recklessness, the van hit a car which had already entered the intersection. As a result, CD who was driving the car suffered physical injuries, while damage to his car amounted to P8,500.00. What is the proper charge against AB? (2012 Bar Question)

- A) AB should be charged with complex crime of reckless imprudence resulting in damage to property with slight physical injuries.
- B) AB should be charged with reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in damage to property.
- C) AB should be charged with complex crime of slight physical injuries with damage to property.

D) AB should be charged with slight physical injuries and reckless imprudence resulting in damage to property.

SUGGESTED ANSWER:

A. Reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes. Hence, conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various consequences. Thus, AB may be convicted of one crime, either reckless imprudence resulting in slight physical injuries or reckless imprudence resulting in damage to property (Ivler v. Modesto-San Pedro, GR No. 172716, November 17, 2010).

332. Culpa can either be a crime by itself or a mode of committing a crime. Culpa is a crime by itself in

- A) reckless imprudence resulting in murder.**
- B) medical malpractice.**
- C) serious physical Injuries thru reckless imprudence.**
- D) complex crime of reckless imprudence resulting in serious physical injuries.**

SUGGESTED ANSWER: D.

333. Olimpio caught a cold and was running a fever. His doctor prescribed paracetamol. Olimpio went to a drug store with the prescription, and the pharmacist sold him three (3) tablets. Upon arriving home, he took a tablet. One hour later, he had a seizure and died. The autopsy showed that the tablet he had taken was not paracetamol but a pill to which he was allergic. The pharmacist was charged with murder. Is the charge proper? If not, what should it be? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

The charge was improper. The pharmacist should be charged with criminal negligence, or reckless imprudence resulting in homicide, because there was not intent to kill Olimpio. The accused inexcusably lacked precaution in failing to dispense the proper medicine to the victim which caused the latter's death (Art. 365, RPC).

III. SPECIAL LAWS

Punishable acts and circumstances affecting criminal liability of the following:

A. Anti-Arson Law (Secs. 1 to 5, PD 1613, as amended by PD 1744)

B. Anti-Child Pornography Act of 2009 (Secs. 3[a-c], 4, and 5, RA 9775)

334. Mr. P owns a boarding house where he knowingly allowed children to be videotaped while simulating explicit sexual activities. What is Mr. P's criminal liability, if any? (2011 Bar Question)
- A) Corruption of minors under the Penal Code
 - B) Violation of the Child Pornography Act
 - C) Violation of the Child Abuse Law
 - D) None

SUGGESTED ANSWER: B.

C. Anti-Fencing Law of 1979 (Secs. 2 and 5, PD 1612)

335. Ofelia, engaged in the purchase and sale of jewelry, was charged with violation of PD 1612, otherwise known as the *Anti-Fencing Law*, for having been found in possession of recently stolen jewelry valued at P100,000.00 at her jewelry shop. Her defense is that she merely bought the same from Antonia and produced a receipt covering the sale. She presented other receipts given to her by Antonia representing previous transactions. Convicted of the charge, Ofelia appealed, arguing that her acquisition of the jewelries resulted from a legal transaction and that the prosecution failed to prove that she knew or should have known that the pieces of jewelry which she bought from Antonia were proceeds of the crime of theft. (2016 Bar Question)

- A) What is a "fence" under PD 1612?
- B) Is Ofelia liable under the Anti-Fencing Law? Explain.

SUGGESTED ANSWER:

- A) Fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (Section 2 of PD 1612).
- B) No. Ofelia is not liable under the Anti-Fencing Law.

Under Section 5 of PD No. 1612, mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing. However, said presumption can be overturned by evidence which shows that Ofelia is an innocent purchaser.

In this case, Ofelia's proved that she acquired the jewelries through a legitimate transaction by presenting a receipt for the transaction. Further, there are no other circumstances which would indicate that Ofelia was not innocent purchaser of the jewelries.

Thus, Ofelia is not liable under the Anti-Fencing Law.

336. **Manolo, an avid art collector, was invited to Tonio's house. There, Manolo noticed a nice painting that exactly looked like the painting which he reported was stolen from him some years back. Manolo confronted Tonio about the painting, but Tonio denied any knowledge, claiming that he bought the painting legitimately from a friend. Manolo later proved to Tonio that the painting was indeed the stolen painting.**
- A) **What crime/s, if any, may Tonio be charged with?**
 - B) **Manolo decided to take matters into his own hands and, one night, broke into Tonio's house by destroying the wall and taking the painting. What, if any, would be the liability of Manolo?**

SUGGESTED ANSWER:

- A) Tonio may be charged with violation of PD 1612, The Anti-Fencing Law. Under Section 5 of the said law, mere possession of any article, item, object, or anything of value which has been the proceeds of robbery or thievery is prima facie evidence of fencing. Since Tonio is in possession of a stolen painting, the law presumes that he committed the crime of fencing.
- B) Manolo is liable of Qualified Trespass to Dwelling under Article 280, RPC. Trespass to dwelling is qualified by use of force and violence since Manolo entered the house of Tonio against the will of the latter. He cannot be liable for theft of his own property.

337. **Roberto bought a Toyota Fortuner from Iñigo for P500,000. While driving his newly-bought car, Roberto met a minor accident that made the examination of his vehicle's Registration Certificate necessary. When the policeman checked the plate, chassis and motor numbers of the vehicle against those reflected in the Registration Certificate, he found the chassis and motor numbers to be different from what the Registration Certificate stated. The Deed of Sale covering the sale of the Fortuner, signed by Iñigo, also bore the same chassis and motor numbers as Roberto's Registration Certificate. The chassis and motor numbers on the Fortuner were found, upon verification with the Land Transportation Office, to correspond to a vehicle previously reported as carnapped.**

Roberto claimed that he was in good faith; Iñigo sold him a carnapped vehicle and he did not know that he was buying a carnapped vehicle.

If you were the prosecutor, would you or would you not charge Roberto with a crime? (2013 Bar Question)

SUGGESTED ANSWER:

Roberto may use the defense that he is a buyer in good faith is based on his reliance on the "deed of sale" executed by Inigo with attached copy of the "Registration Certificate."

Consequently, in light of the satisfactory explanation of Roberto of his possession of the vehicle, the presumption of authorship of the theft upon a person found in possession of the stolen personal property finds no application in the instant case.

There is, thus, no probable cause or evidence to warrant the prosecution of Roberto for any wrongdoing, even for the offense of fencing.

338. Arlene is engaged in the buy and sell of used garments, more popularly known as "*ukay-ukay*." Among the items found by the police in a raid of her store in Baguio City were brand-new *Louie Feraud* blazers.

Arlene was charged with "fencing." Will the charge prosper? Why or why not? (2010 Bar Question)

SUGGESTED ANSWER:

No, the charge of "fencing" will not prosper. "Fencing" is committed when a person, with intent to gain for himself or for another, deals in any manner with an article of value which he knows or should be known to him to have been derived from the proceeds of theft or robbery (Sec. 2, PD 1612). Thus, for a charge of fencing to prosper, it must first be established that theft or robbery of the article subject of the alleged "fencing" has been committed. This does not appear from the facts of this case.

339. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.

In a prosecution for fencing under P.D. 1612, it is a complete defense for the accused to prove that he had no knowledge that the goods or articles found in his possession had been the subject of robbery.

SUGGESTED ANSWER:

False. Fencing is committed if the accused "should have known" that the goods or articles had been the subject of theft or robbery (P.D. No. 1612[a]). Mere possession of the stolen goods gives rise to the *prima facie* presumption of fencing.

D. Anti-Graft and Corrupt Practices Act (Sec. 3, RA 3019, as amended)

340. Dr. Chow, a government doctor, failed to submit his Daily Time Record (DTR) from January to March 2000 and did not get approval of his sick leave application for April because of evidence that he was actually moonlighting elsewhere. Thus, the medical Director caused the withholding of his salary for the periods in question until he submitted his DTRs in May 2000. Can Dr. Chow prosecute the medical director for causing him undue injury in violation of the Anti-Graft and Corrupt Practices Act? (2011 Bar Question)

- A) Yes, since the medical Director acted with evident bad faith.
- B) No, since the medical director has full discretion in releasing the salary of government doctors.
- C) Yes, since his salary was withheld without prior hearing.
- D) No, since Dr. Chow brought it upon himself, having failed to submit the required DTRs.

SUGGESTED ANSWER: D.

341. Proserfina, an assistant public high school principal, acted to facilitate the release of salary differentials and election duty per diem of classroom teachers with the agreement that they would reimburse her for her expenses.

Did Proserfina commit a crime? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Yes, Proserfina committed a violation of Sec. 3(b) of Rep. Act No. 3019, which considers as a corrupt practice, the act of:

“(b) Directly or indirectly requesting or receiving any gift, present, share percentage, or benefit, for himself or for any other person, in connection with any contact or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.”

As the assistant public high school principal, it Proserfina’s duty to intervene in the release of salary differentials and *per diem* of classroom teachers under her and her request for a share or benefit in the salary differentials and *per diem* of classroom teachers constitutes graft or corrupt practices under Sec. 3(b) of Rep. Act No. 3019.

342. Charina, Clerk of Court of an RTC Branch, promised the plaintiff in a case pending before the court that she would convince the Presiding Judge to decide the case in plaintiff’s favor. In consideration therefor, the plaintiff gave Charina P20,000.00.

Charina was charged with violation of Section 3 (b) of Republic Act No. 3019, prohibiting any public officer from directly or indirectly requesting or receiving any gift, present, percentage, or benefit in connection with any contract or transaction x x x wherein the public officer, in his official capacity, has to intervene under the law.

While the case was being tried, the Ombudsman filed another information against Charina for Indirect Bribery under the Revised Penal Code. Charina demurred to the second information, claiming that she can no longer be charged under the Revised Penal Code having been charged for the same act under R.A. 3019.

Is Charina correct? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

No, Charina is not correct. The elements for violation of Republic Act (RA) No. 3019 and Indirect Bribery are not the same, even if the charge for said cases arose from the same act.

In view of the different elements of both crimes, said crimes are separate and distinct from each other. The two charges do not constitute a ground for a motion to dismiss or motion to quash, as there is no jeopardy against the accused.

E. Anti-Hazing Act of 2018 (Secs. 2 and 3, RA 8049, as amended by RA 11053)

F. Anti-Hijacking Law (Secs. 1 and 3, RA 6235)

343. Compelling the pilot of an aircraft of Philippine Registry to change its destination is _____. (2013 Bar Question)

- A) grave coercion
- B) a violation of the Anti-Hijacking Law or R.A. No. 6235
- C) grave threats
- D) a violation of the Human Security Act of 2007 or the Anti-Terrorism Law
- E) All of the above.

SUGGESTED ANSWER:

B. It shall be unlawful for any person to compel a change in the course or destination of an aircraft of Philippine registry, or to seize or usurp the control thereof, while it is in flight (Section I, Rep. Act no. 6235).

G. Anti-Photo and Video Voyeurism Act of 2009 (Secs. 3 [a, b, d, f] and 4, RA 9995)

H. Anti-Plunder Act (Secs. 1 and 2, RA 7080, as amended by RA 7659)

344. Overjoyed by the award to his firm of a multi-billion government contract for the development of an economic and tourism hub in the Province of Blank, Mr. Gangnam allotted the amount of P100 Million to serve as gifts for certain persons instrumental in his firm's winning the award. He gave 50% of that amount to Governor Datu, the official who had signed the contract with the proper authorization from the Sangguniang Panlalawigan; 25% to Bokal Diva, the Sangguniang Panlalawigan member who had lobbied for the award of the project in the Sangguniang Panlalawigan; 25% to Mayor Dolor of the Municipality where the project would be implemented. Governor Datu received his share through his wife, Provincial First Lady Dee, who then deposited the amount in her personal bank account.

Previously, upon facilitation by the Bokal Diva, Mr. Gangnam concluded an agreement with Mayor Dolor for the construction of the Blank Sports Arena worth P800 Million. The project was highly overpriced because it could be undertaken and completed for not more than P400 Million. For this project, Mayor Dolor received from Mr. Gangnam a gift of P10 Million, while Bokal Diva got P25 Million.

In both instances, Bokal Diva had her gifts deposited in the name of her secretary, Terry, who personally maintained a bank account for Bokal Diva's share in government projects. (2017 Bar Question)

A) May each of the above-named individuals be held liable for *plunder*? Explain your answer.

SUGGESTED ANSWER:

No, Governor Datu is not liable for plunder.

To be held liable for plunder, the public officer must amass, accumulate or acquire ill-gotten wealth through a combination or series of overt or criminal acts. The word "combination" means at least two different predicate crimes; while the term "series" means at least two predicate crimes of the same kind. A single predicate crime amounting to 50 million pesos is not plunder.

The act of receiving P50 Million by Governor Datu in connection with any government contract or project for the development of an economic and tourism hub is a predicate crime of plunder.

As regards, Mayor Dolor Kickback, the series acts of receiving by or gift in the amount of P25 million and P10 million in connection with any government contract or project for the development of an economic and tourism hub and for the construction of the Blank Sports Arena, respectively, are predicate crimes of plunder. However, the aggregate amount of ill-gotten wealth acquired is less than P50 million. Hence,

plunder is not committed since element that the aggregate amount of ill-gotten wealth is at least P50 million is not present.

Bokal Diva is liable for plunder because he acquired ill-gotten wealth in the aggregate amount of P50 million through a series of predicate crimes consisting of receipts of kickback or gift in the amount of P25 million and P25 million in connection with any government contract or project for the development of an economic and tourism hub and for the construction of the Blank Sports Arena, respectively.

Mr. Gangnam, is liable for plunder for giving kickbacks to Bokal Diva, and Terry for depositing the money in his account for Bokal Diva are also liable for plunder. Under *RA No. 7080*, any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense.

B) Define wheel conspiracy and chain conspiracy. Is either or both kinds existent herein? Explain your answer.

SUGGESTED ANSWER:

In the case at bar, both type of conspiracy exists. The distribution of commissions or gifts by Mr. Gangnam and the acceptance of Governor Datu, Bokal Diva, Mayor Dolor is a type of wheel conspiracy where a single person, Mr. Gangnam, dealt individually with the public officials to commit the overt acts. The chain conspiracy, on the other hand, is evident in the overpricing of the sports complex through the facilitation of Bokal Diva, the conclusion of the agreements by Mayor Dolor, and the distribution of the gifts by Mr. Gangnam.

C) What provisions of RA no. 3019 (*Anti-Graft & Corrupt Practices Act*), if any, were violated by any of the above-named individuals, specifying the persons liable therefore? Explain your answer.

SUGGESTED ANSWER:

Governor Datu, Mayor Dolor and Bokal Diva are liable for violation of Section 3 (b) of RA No. 3019 for receiving money in connection with government contract or transaction for the development of an economic and tourism hub where they have the right to intervene under the law. Likewise, Mr. Gangnam, is also liable for violation of Section 3 (b) of RA No. 3019 on the basis of conspiracy.

Mayor Dolor and Bokal Diva are liable for violation of Section 3 (b) of RA No. 3019 for receiving money in connection with government contract or transaction for the construction of the Blank Sports Arena or violation of Section 3 (e) for giving Mr. Gangnam, a private party, unwarranted benefits, advantage or preference through manifest partiality and evident bad faith by entering an agreement for such construction, which is highly overpriced, or violation of Section 3 (g) for entering, on behalf of the Government, into any contract or transaction for such construction manifestly and grossly disadvantageous to the same. Likewise, Mr. Gangnam for giving money to the said public officers or for entering such contract is also liable for violation of Section 3(b) of RA No. 3019 on the basis of conspiracy.

D) What crimes under the Revised Penal Code, if any, were committed, specifying the persons liable therefor? Explain your answer.

SUGGESTED ANSWER:

Governor Datu, Mayor Dolor and Bokal Diva are liable for indirect bribery under Art. 211, RPC for receiving money from Mr. Gangnam.

Meanwhile, Mr. Gangnam is liable for corruption of public officer under Article 212 of the RPC because of his act of giving gifts to the public officers.

345. Senator Adamos was convicted of plunder. About one year after beginning to serve his sentence, the President of the Philippines granted him absolute pardon. The signed pardon states: "In view hereof, and in pursuance of the authority vested upon me by the Constitution, I hereby grant absolute pardon unto Adamos, who was convicted of plunder in Criminal Case No. XV32 and upon whom the penalty of reclusion perpetua was imposed." He now comes to you for advice. He wants to know if he could run for senator in the next election. (2015 Bar Question)

- A) What advice will you give Adamos? Explain.
- B) Assuming that what Adamos committed was heading a rebellion for which he was imposed the same penalty of reclusion perpetua, and what he received was amnesty from the government, will your answer be the same?

SUGGESTED ANSWER:

- A) If I were the counsel of Senator Adamos, I will give him the advice that he cannot run in the Senatorial race. Under Article 36 of the Revised Penal Code, pardon shall not work the restoration of the right to hold public office unless such right is expressly restored by the terms of the pardon. Since the terms of the pardon has not expressly restored his right to hold public office or remitted the accessory penalty of perpetual absolute disqualification.
- B) If Senator Adamos was convicted of rebellion and he received amnesty, I will give him the advice that he can run in the Senatorial race. Under Article 89 of the Revised Penal Code, criminal liability is totally extinguished by amnesty, which completely extinguishes the penalty and all its effects. Thus, the amnesty extinguishes not only the principal penalty of reclusion perpetua but also its effects such as the accessory penalty of perpetual absolute disqualification.

346. *City Engr. A*, is the city engineer and the Chairman of the Bids and Awards Committee (*BAC*) of the *City of Kawawa*. In 2009, the *City of Kawawa*, through an ordinance, allotted the amount of P100 million for the construction of a road leading to the poblacion. *City Engr. A* instead, diverted the construction of the road leading to his farm. Investigation further showed that he accepted money in the amount of P10 million each from three (3) contending bidders, who eventually lost in the bidding.

Audit report likewise showed that service vehicles valued at P2 million could not be accounted for although reports showed that these were lent to *City Engr. A's* authorized drivers but the same were never returned. Further, there were funds under *City Engr. A's* custody amounting to P10 million which were found to be missing and could not be accounted for. In another project, he was instrumental in awarding a contract for the construction of a city school building costing P10 million to a close relative, although the lowest bid was P8 million. Investigation also revealed that *City Engr. A* has a net worth of more than P50 million, which was way beyond his legitimate income. (2014 Bar Question)

- A) If you are the Ombudsman, what charge or charges will you file against *City Engr. A*?
- B) Suppose the discovered net worth of *City Engr. A* is less than P50 million, will your answer still be the same?

SUGGESTED ANSWER:

- A) If I am the Ombudsman, I would file a case for Plunder under RA 7080 against *City Engineer A*. *Engr. A* is a public officer who amassed, accumulated or acquired ill-gotten wealth through a combination of overt or criminal acts of misuse, misappropriation, conversion, or malversation of public funds,

receiving kickbacks from persons in connection with a government contract or project by reason of his of office or position, and illegally or fraudulently conveying or disposing of assets belonging to the national government, in the aggregate amount or total value of at least P50 million.

- B) Yes, my answer will still be the same. City Engr. A's net worth being less than P50 million is not determinative of his liability. What is the material is the fact that he acquired, amassed and accumulated ill-gotten wealth of more than P50 million. The basis of plunder is the combination of criminal acts or series of acts that accumulated at least P50million. The predicate crimes are already absorbed in the crime of plunder.

I. Anti-Sexual Harassment Act of 1995 (Sec. 3, RA 7877)

J. Anti-Torture Act of 2009 (Secs. 3 [a, b], 4, and 5, RA 9745)

347. AA was arrested for committing a bailable offense and detained in solitary confinement. He was able to post bail after two (2) weeks of detention. During the period of detention, he was not given any food. Such deprivation caused him physical discomfort. What crime, if any, was committed in connection with the solitary confinement and food deprivation of AA? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

The crime of physical torture was committed. Section 4 (2) R.A. No. 9745 provides that food deprivation and confinement in solitary cell are considered as physical torture.

In addition to torture, the crime of maltreatment of prisoner is committed.

348. X, a police officer, placed a hood on the head of W, a suspected drug pusher, and watched as Y and Z, police trainees, beat up and tortured W to get his confession. X is liable as: (2011 Bar Question)

- A) as accomplice in violation of the Anti-Torture Act.
- B) a principal in violation of the Anti-Torture Act.
- C) a principal in violation of the Anti-Hazing Law.
- D) an accomplice in violation of the Anti-Hazing Law.

SUGGESTED ANSWER: B.

K. Anti-Trafficking in Persons Act of 2003 (Secs. 3, 4, and 6, RA 9208, as amended)

349. Loko advertised on the internet that he was looking for commercial models for a TV advertisement. Ganda, a 16-year-old beauty, applied for the project. Loko offered her a contract, which Ganda signed. She was asked to report to an address which turned out to be a high-end brothel. Ganda became one of its most featured attraction.

What is Loko's liability, if any? What effect would Ganda's minority have on Loko's liability? (2014 Bar Question)

SUGGESTED ANSWER:

Loko is liable for violating the provisions of Republic Act (RA) No. 9208.

He recruited, offered and hired Ganda by means of fraud or deception for the purpose of exploitation or prostitution. By means of deceit, i.e., in the guise of making her a commercial model, Loko recruited Ganda for the purpose of prostitution.

Under Section 6, RA 9208, when the trafficked person is a child, the crime committed is Qualified Trafficking in Persons, penalized by life imprisonment. Thus, Ganda's minority is a qualifying circumstance.

350. When the adoption of a child is effected under the Inter-Country Adoption Act for the purpose of prostitution, what is the proper charge against the offender who is a public officer in relation to the exploitative purpose? (2012 Bar Question)

- A) acts that promote trafficking in persons;
- B) trafficking in persons;
- C) qualified trafficking in persons;
- D) use of trafficked person.

SUGGESTED ANSWER:

C. Adoption or facilitating the adoption of child for the purpose of prostitution constitutes trafficking in person (Section 4 [f] of RA No. 9208).

L. Anti-Violence Against Women and their Children Act of 2004 (Secs. 3, 5, and 26, RA 9262)

351. Romeo and Julia have been married for twelve (12) years and had two (2) children. The first few years of their marriage went along smoothly. However, on the fifth year onwards, they would often quarrel when Romeo comes home drunk. The quarrels became increasingly violent, marked by quiet periods when Julia would leave the conjugal dwelling. During these times of quiet, Romeo would "court" Julia with flowers and chocolate and convince her to return home, telling her that he could not live without her; or Romeo would ask Julia to forgive him, which she did, believing that if she humbled herself, Romeo would change. After a month of marital bliss, Romeo would return to his drinking habit and the quarrel would start again, verbally at first, until it would escalate to physical violence.

One night, Romeo came home drunk and went straight to bed. Fearing the onset of another violent fight, Julia stabbed Romeo while he was asleep. A week later, their neighbors discovered Romeo's rotting corpse on the marital bed. Julia and the children were nowhere to be found. Julia was charged with parricide. She asserted "battered woman's syndrome" as her defense. (2016 Bar Question)

Explain the "cycle of violence."

SUGGESTED ANSWER:

The battered woman syndrome is characterized by the so-called "cycle of violence," which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase.

During the tension-building phase, minor battering occurs – it could be verbal or slight physical abuse or another form of hostile behavior. The woman tries to pacify the batterer through a kind, nurturing behavior; or by simply staying out of his way. The acute battering incident is characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no

control; only the batterer may put an end to the violence. The final phase of the cycle of violence begins when the acute battering incident ends. During this tranquil period, the couple experience profound relief.

Is Julia's "battered woman's syndrome" defense meritorious? Explain.

SUGGESTED ANSWER:

Yes. The defense of Battered Woman Syndrome can be invoked if the woman in marital relationship with the victim is subjected to cumulative abuse or battery involving the infliction of physical harm resulting to the physical and psychological or emotional distress. (People v. Genosa, G.R. No. 135981, 15 January 2004). RA No. 9262 states that Battered Woman Syndrome is a defense notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code such as unlawful aggression (Section 26 of RA No. 9262).

In this case, because of the battering episodes, Julia, feared the onset of another violent fight and honestly believed the need to defend herself even if Romeo had not commenced an unlawful aggression. Even in the absence of unlawful aggression, Battered Woman Syndrome is a defense.

352. Dion and Talia were spouses. Dion always came home drunk since he lost his job a couple of months ago. Talia had gotten used to the verbal abuse from Dion. One night, in addition to the usual verbal abuse, Dion beat up Talia. The next morning, Dion saw the injury that he had inflicted upon Talia and promised her that he would stop drinking and never beat her again. However, Dion did not make good on his promise. Just after one week, he started drinking again. Talia once more endured the usual verbal abuse. Afraid that he might beat her up again, Talia stabbed Dion with a kitchen knife while he was passed out from imbibing too much alcohol. Talia was charged with the crime of parricide. (2015 Bar Question)

- A) May Talia invoke the defense of Battered Woman Syndrome to free herself from criminal liability? Explain.**
- B) Will your answer be the same, assuming that Talia killed Dion after being beaten up after a second time? Explain.**

SUGGESTED ANSWER:

- A) No, a single act of battery or physical harm committed by Dion against Talia resulting to the physical and psychological or emotional distress on her part is not sufficient to avail of the benefit of the justifying circumstance of "Battered Women Syndrome".

The defense of Battered Woman Syndrome can be invoked if the woman with marital relationship with the victim is subjected to cumulative abuse or battery involving the infliction of physical harm resulting to the physical and psychological or emotional distress. Cumulative means resulting from successive addition. In sum, there must be "at least two battering episodes" between the accused and her intimate partner and such final episode produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life (People v. Genosa, G.R. No. 135981, January 15, 2004).

- B) Yes, Talia can invoke the defense of Battered Woman Syndrome to free herself from criminal liability for killing her husband since she suffered physical and emotional distress arising from cumulative abuse or battery, Under Section 26 of RA 9262, victim survivors of Battered Woman Syndrome do not incur any criminal or civil liability despite the absence of the requisites of self-defense.

353. Ms. A had been married to Mr. B for 10 years. Since their marriage, Mr. B had been jobless and a drunkard, preferring to stay with his "barkadas" until the wee hours of the morning. Ms. A was the breadwinner and attended to the needs of their three (3) growing children. Many times,

when Mr. B was drunk, he would beat Ms. A and their three (3) children, and shout invectives against them. In fact, in one of the beating incidents, Ms. A suffered a deep stab wound on her tummy that required a prolonged stay in the hospital. Due to the beatings and verbal abuses committed against her, she consulted a psychologist several times, as she was slowly beginning to lose her mind. One night, when Mr. B arrived dead drunk, he suddenly stabbed Ms. A several times while shouting invectives against her.

Defending herself from the attack, Ms. A grappled for the possession of a knife and she succeeded. She then stabbed Mr. B several times which caused his instantaneous death. Medico-Legal Report showed that the husband suffered three (3) stab wounds.

Can Ms. A validly put up a defense? Explain. (2014 Bar Question)

SUGGESTED ANSWER:

Yes. Ms. A is suffering from physical and psychological or emotional distress which resulted from cumulative abuse by her husband. She even consulted a psychologist several times, as she was slowly beginning to lose her mind.

Section 26 of Republic Act No. 9262 states that “victim survivors who are found by the court to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for the justifying circumstance of self- defense under the Revised Penal Code.”

M. Bouncing Checks Law (Sec. 1, BP 22)

354. The husband has for a long time physically and mentally tortured his wife. After one episode of beating, the wife took the husband’s gun and shot him dead. Under the circumstances, her act constitutes: (2011 Bar Question)

- A) Mitigating vindication of grave offense.
- B) battered woman syndrome, a complete self-defense.
- C) incomplete self-defense.
- D) mitigating passion and obfuscation.

SUGGESTED ANSWER: B.

355. A battered woman claiming self-defense under the Anti-Violence against Women and Children must prove that the final acute battering episode was preceded by: (2011 Bar Question)

- A) 3 battering episodes.
- B) 4 battering episodes.
- C) 5 battering episodes.
- D) 2 battering episodes.

SUGGESTED ANSWER: D.

356. Jack and Jill have been married for seven years. One night, Jack came home drunk. Finding no food on the table, Jack started hitting Jill only to apologize the following day.

A week later, the same episode occurred – Jack came home drunk and started hitting Jill.

Fearing for her life, Jill left and stayed with her sister. To woo Jill back, Jack sent her floral arrangements of spotted lilies and confectioneries. Two days later, Jill returned home and decided to give Jack another chance. After several days, however, Jack again came home drunk. The

following day, he was found dead.

Jill was charged with parricide but raised the defense of "Battered Woman Syndrome."

A) Define "Battered Woman Syndrome." (2010 Bar Question)

SUGGESTED ANSWER:

"Battered Woman Syndrome" refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse (Section 3(d), Republic Act No. 9262).

B) What are the three phases of the "Battered Woman Syndrome"? (2010 Bar Question)

SUGGESTED ANSWER:

The Battered Woman Syndrome is characterized by the "cycle of violence," which has three (3) phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving, or non-violent phase.

N. Comprehensive Dangerous Drugs Act of 2002 (Secs. 5, 11, 15, and 21, RA 9165, as amended by RA 10640)

357. Maita was the object of Solito's avid sexual desires. Solito had attempted many times to entice Maita to a date in bed with him but Maita had consistently refused. Fed up with all her rejections, Solito abducted Maita into a Toyota Innova and drove off with her to a green-painted house situated in a desolated part of the town. There, Solito succeeded in having carnal knowledge of Maita against her will.

Meanwhile, the police authorities were tipped off that at 11:30 p.m. on that same night Solito would be selling marijuana outside the green-painted house. Acting on the tip, the PNP station of the town formed a buy-bust team with PO2 Masahol being designated the poseur buyer. During the buy-bust operation Solito opened the trunk of the Toyota Innova to retrieve the bag of marijuana to be sold to PO2 Masahol. To cut the laces that he had tied the bag with, Solito took out a Swiss knife, but his doing so prompted PO2 Masahol to effect his immediate arrest out of fear that he would attack him with the knife. PO2 Masahol then confiscated the bag of marijuana as well as the Toyota Innova. (2017 Bar Question)

- A) Two informations were filed against Solito in the RTC – one for forcible abduction with rape, raffled to Branch 8 of the RTC; the other for illegal sale of drugs, assigned to Branch 29 of the RTC. Was Solito charged with the proper offenses based on the circumstances? Explain your answer.
- B) While the Prosecution was presenting its evidence in Branch 29, Branch 8 convicted Solito. Immediately after the judgment of conviction was promulgated, Solito filed in both Branches a motion for the release of the Toyota Innova. He argued and proved that he had only borrowed the vehicle from his brother, the registered owner. Branch 8 granted the motion but Branch 29 denied it. Were the two courts correct in their rulings? Explain your answer.

SUGGESTED ANSWER:

- A) Solito should have been charged of rape. Rape absorbs forcible abduction where the accused intended at the very outset to rape the victim when he abducted her (People v. San Pedro, G.R. No. 94128, 3 February 1993).

On the hand, the charge of sale of dangerous drugs is improper, since this crime is consummated only upon the delivery of the dangerous drugs to the poseur buyer for a consideration. In this case, Solito has not yet delivered the marijuana to PO2 Masahol when the latter apprehended the former, the crime committed is not sale of dangerous drugs but attempted sale of dangerous drugs.

- B) Yes. The two courts were correct in their rulings.

Article 45 of the Revised Penal Code provides that every penalty imposed for the commission of a felony shall include the forfeiture of the instruments or tools with which the crime was committed, unless they be the property of a third person not liable for the offense.

Likewise, the return of the instrument or tools to its owner cannot be prevented unless said owner is charged with the offense for which said instrument or tool was used. [PDEA v. Brodett, (G.R. No. 196390, 28 September 2011, citing People v. Jose, G.R. No. L-28232, Feb. 6, 1971)]. The Supreme Court further held that the forfeiture of said instrument or tools, if warranted, would be part of the penalty prescribed (PDEA v. Brodett, supra). Hence, the determination of whether it will be forfeited could be made only when judgment is rendered.

In this case, the RTC Branch 8 already rendered a judgment of conviction against Solito and he was able to prove that the car belonged to his brother. Hence, it was correct for the RTC Branch 8 to order the release of the Toyota Innova to his brother who is not liable for the offense.

Meanwhile, the Supreme Court ruled that it is premature to release the car used in the sale of dangerous drugs while the trial is still ongoing (PDEA v. Brodett, supra) and explained that the status of the car for the duration of the trial as being in custodia legis is primarily intended to preserve it as evidence and to ensure its availability as such (PDEA v. Brodett, supra).

Thus, RTC Branch 29, was correct in denying Solito's motion to release the Toyota Innova considering that the trial for illegal sale of drugs is still ongoing.

- 358. Dimas was arrested after a valid buy-bust operation. Macario, the policeman who acted as poseur-buyer, inventoried and photographed ten (10) sachets of shabu in the presence of a barangay tanod. The inventory was signed by Macario and the tanod, but Dimas refused to sign. As Macario was stricken with flu the day after, he was able to surrender the sachets to the PNP Crime Laboratory only after four (4) days. During pre-trial, the counsel de officio of Dimas stipulated that the substance contained in the sachets examined by the forensic chemist is in fact methamphetamine hydrochloride or shabu. Dimas was convicted of violating Section 5 of RA 9165. On appeal, Dimas questioned the admissibility of the evidence because Macario failed to observe the requisite "chain of custody" of the alleged "shabu" seized from him. On behalf of the State, the Solicitor General claimed that despite non-compliance with some requirements, the prosecution was able to show that the integrity of the substance was preserved. Moreover, even with some deviations from the requirements, the counsel of Dimas stipulated that the substance seized from Dimas was shabu so that the conviction should be affirmed. (2016 Bar Question)**

- A) What is the "chain of custody" requirement in drug offenses?**
B) Rule on the contention of the State.

SUGGESTED ANSWER:

- A) To establish the chain of custody, the prosecution must show the movements of the dangerous drugs from its confiscation up to its presentation in court. The purpose of establishing the chain of custody is to ensure the integrity of the corpus delicti (*People v. Magat*, G.R. No. 179939, 29 September 2008). The following links that must be established in the chain of custody in a buy-bust situation are: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court (*People v. Kamad*, G.R. No. 174198, 19 January 2010).

To establish the first link in the chain of custody, and that is the seizure of the drug from the accused, the prosecution must comply with Section 21 of RA No. 9165, which requires that the apprehending officer after the confiscation of drug must immediately physically inventory and photograph the same in the presence of the accused or the person from whom such items were confiscated, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof and within twenty-four (24) hours upon such confiscation, the drug shall be submitted to the PDEA Forensic Laboratory for examination.

- B) Yes, the contention of the State is meritorious. Failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized item. Moreover, the issue of non-compliance with Section 21 of RA No. 9165 cannot be raised for the first time on appeal (*People v. Badilla*, G.R. No. 218578, August 31, 2016).

Here, Macario, the policeman failed to comply with Section 21 of RA No 9165 since the inventory and photograph of the drugs was only made in the presence of barangay tanod and the same was not submitted to the PNP Crime Laboratory within 24 hours. However, the failure to strictly comply with Section 21 of R.A. No. 9165 does not necessarily render the items seized or confiscated inadmissible since there was preservation of the integrity and evidentiary value of the seized item. Thus, the contention of the State is meritorious.

- 359. The Philippine Drug Enforcement Agency (PDEA) had intelligence reports about the drug pushing activities of Rado, but could not arrest him for lack of concrete evidence. SP03 Relio, a PDEA team leader, approached Ernilo and requested him to act as poseur-buyer of shabu and transact with Rado. Ernilo refused, saying that he had completely been rehabilitated and did not want to have anything to do with drugs anymore. But he was prevailed upon to help when SP03 Relio explained that only he could help capture Rado because he used to be his customer. SP03 Relio then gave Ernilo the marked money to be used in buying shabu from Rado. The operation proceeded. After Ernilo handed the marked money to Rado in exchange for the sachets of shabu weighing 50 grams, and upon receiving the pre-arranged signal from Ernilo, SP03 Relio and his team members barged in and arrested Rado and Ernilo, who were both charged with violation of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. (2015 Bar Question)**

- A) What defense, if any, may Ernilo invoke to free himself from criminal liability? Explain.**
B) May Rado adopt as his own Ernilo's defense? Explain.

SUGGESTED ANSWER:

- A) Ernilo may invoke Section 33, Art. II, RA 9165 or the "Comprehensive Drugs Act of 2002." He may have violated Section 11 of RA 9165 for possession of shabu but he is immune from prosecution and punishment because of his role as the poseur-buyer in the entrapment operation.

- B) No. First, an entrapment operation is a valid means of arresting violators of RA 9165. It is an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. Second, the immunity does not extend to violators of Section 5 of RA 9165 or the sale of shabu (sec. 33, RA 9165). Lastly, he was the offender of the crime and the most guilty of the offense.

360. George, the 20-year old son of a rich politician, was arrested at the NAIA arrival lounge and found positive for opium, a dangerous drug. When arrested, 15 grams of cocaine were found in his backpack.

What offense would you charge George under R.A. No. 9160 (Comprehensive Dangerous Drugs Act)? (2013 Bar Question)

- A) Use of dangerous drug.
- B) Use and possession of dangerous drugs.
- C) Possession of dangerous drugs.
- D) Importation of dangerous drugs.
- E) None of the above.

SUGGESTED ANSWER:

C. George shall be held liable possession of dangerous drugs. Section 11 of RA No. 9165 provides, where a person tested positive for dangerous drug is also found to have in his possession any dangerous drug, he shall be held liable for possession of dangerous drug.

361. The police officer in civilian clothes asked X where he can buy shabu. X responded by asking the officer how much of the drug he needed. When he told him, X left, returned after a few minutes with the shabu, gave it to the officer, and took his money. X is: (2011 Bar Question)

- A) liable for selling since the police operation was a valid entrapment.
- B) not liable for selling since the police operation was an invalid entrapment.
- C) liable for selling since the police operation was a valid form of instigation
- D) not liable since the police operation was an invalid instigation.

SUGGESTED ANSWER: A.

362. Following his arrest after a valid buy-bust operation, Tommy was convicted of violation of Section 5, Republic Act 9165. On appeal, Tommy questioned the admissibility of the evidence because the police officers who conducted the buy-bust operation failed to observe the requisite "chain of custody" of the evidence confiscated and/or seized from him.

What is the "chain of custody" requirement in drug offenses? What is its rationale? What is the effect of failure to observe the requirement? (2009 Bar Question)

SUGGESTED ANSWER:

The chain of custody requirement in drug offense refers to the duly recorded, authorized movement and custody of seized dangerous drugs, controlled chemicals, plant sources of dangerous drugs, and laboratory equipment of dangerous drugs from the time confiscation/seizure thereof from the offender, to its turn-over and receipt in the forensic laboratory for examination to its safekeeping and eventual presentation/offer in court as evidence of the criminal violation, and for destruction (Dangerous Drugs Board Regulation No. 1 Series of 2002).

Its rationale is to preserve the authenticity of the corpus delicti or body of the crime by rendering it improbable that the original item seized/confiscated in violation has been exchanged or substituted with

another or tampered with or contaminated. It is a method of authenticating the evidence as would support a finding beyond reasonable doubt that the matter is what the prosecution claims to be.

Failure to observe the "chain of custody" requirement renders the evidence questionable, not trustworthy and insufficient to prove the corpus delicti beyond reasonable doubt. Hence, Tommy would be acquitted on reasonable doubt.

363.

- A) In a conviction for homicide, the trial court appreciated two (2) mitigating circumstances and one (1) aggravating circumstance. Homicide under Article 249 of the Revised Penal Code is punishable by reclusion temporal, an imprisonment term of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, determine the appropriate penalty to be imposed.
- B) Will your answer be the same if it is a conviction for illegal possession of drugs under R.A. 9165 (Dangerous Drugs Act of 2002), the prescribed penalty of which is also imprisonment for a term of twelve (12) years and one (1) day to twenty (20) years? Why or why not? (2009 Bar Question)

SUGGESTED ANSWER:

- A) Under the Indeterminate Sentence Law, the minimum of the sentence shall be anywhere within the range of 6 years and 1 day to 12 years imprisonment and the maximum of the sentence shall be anywhere within the range of Reclusion Temporal minimum i.e., not lower than 12 years and 1 day to not more than 14 years and 8 months.
- B) No, my answer will not be the same because violations of Rep. Act No. 9165 are mala prohibita in which mitigating and aggravating circumstances are not appreciated. In *People v. Simon* (234 SCRA 555[1994]), it was held that Art. 64 of the Revised Penal Code (RPC) can be applied if the special law adopted the nomenclature of penalties provided under the RPC. However, such pronouncement cannot be applied in the instant case because the penalties provided for illegal possession of drugs under R.A. 9165 do not use the technical nomenclature of penalties in the RPC. Hence, the existence of mitigating and aggravating circumstances cannot be appreciated.

364. Tiburcio asked Anastacio to join their group for a "session". Thinking that it was for a mahjong session, Anastacio agreed. Upon reaching Tiburcio's house, Anastacio discovered that it was actually a shabu session. At that precise time, the place was raided by the police, and Anastacio was among those arrested.

What crime can Anastacio be charged with, if any? Explain your answer. (2007 Bar Question)

SUGGESTED ANSWER:

Anastacio may not be charged of any crime. Sec. 7 of R.A. No. 9165 punishes employees and visitors of a den, dive or resort where dangerous drugs are used in any form. However, to be convicted under said provision, the visitor must be aware of the nature of the place as such and shall knowingly visit the same. In this case, Anastacio may not be charged because he is not aware of the nature of the place.

N.B.: This is an offense that is malum prohibitum. Good faith is not a defense.

O. Comprehensive Firearms and Ammunition Regulation Act (Secs. 28 and 29, RA 10591)

365. X, Y and Z agreed among themselves to attack and kill A, a police officer, but they left their home-made guns in their vehicle before approaching him. What crime have they committed? (2011 Bar Question)
- A) Conspiracy to commit indirect assault.
 - B) Attempted direct assault.
 - C) Conspiracy to commit direct assault.
 - D) Illegal possession of firearms.

SUGGESTED ANSWER: D.

P. Cybercrime Prevention Act of 2012 (Secs. 4 to 6, RA 10175)

Q. Human Security Act of 2007 (Secs. 3 to 6, RA 9372)

R. New Anti-Carnapping Act of 2016 (Secs. 3 to 4, RA 10883)

366. A is the driver of B's Mercedes Benz car. When B was on a trip to Paris, A used the car for a joy ride with C whom he is courting. Unfortunately, A met an accident. Upon his return, B came to know about the unauthorized use of the car and sued A for qualified theft. B alleged that A took and used the car with intent to gain as he derived some benefit or satisfaction from its use. On the other hand, A argued that he has no intent of making himself the owner of the car as he in fact returned it to the garage after the joy ride. What crime or crimes, if any, were committed? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

A is guilty of carnapping.

The concept of carnapping is the same as that of robbery and theft. Hence, rules applicable to theft or robbery are also applicable to carnapping (*People v. Asamuddin*, G.R. No. 213913, 2 September 2015). In theft, unlawful taking should be understood within the Spanish concept of *apoderamiento*. In order to constitute *apoderamiento*, the physical taking must be coupled with the intent to appropriate the object, which means intent to deprive the lawful owner of the thing, whether permanently or temporarily (*People v. Valenzuela*, G. R. No. 160188, 21 June 2007).

In this case, A took the car without consent of the B, with intent to temporarily deprive him of the car. Although the taking was "temporary" and for a "joy ride", the Supreme Court in *People v. Bustinera* (*supra*), held that when a person, either with the object of going to a certain place, or learning how to drive, or enjoying a free ride, takes possession of a vehicle belonging to another, without the consent of its owner, is guilty of theft because by taking possession of the personal property belonging to another and using it, his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure.

367. What should be the proper charge against an offender who unlawfully took and carried away a motor vehicle belonging to another without the latter's consent, killing the driver in the process? (2012 Bar Question)
- A) The proper charge against the offender should be murder with the use of motor vehicle.
 - B) The proper charge against the offender should be qualified carnapping or carnapping in an aggravated form.

- C) The proper charge against the offender should be carnapping and homicide.
- D) The proper charge against the offender should be robbery with homicide.

SUGGESTED ANSWER:

B. Section 14 of RA No. 6539, as amended by RA No. 7659 provides that “the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.” The amendment of said law clarifies the intention of the law to make the offense a special complex crime, in the same way that robbery with homicide. As such, the killing merely qualifies the crime of carnapping which for lack of specific nomenclature in an aggravated form.

- 368. A postal van containing mail matters, including checks and treasury warrants, was hijacked along a national highway by ten (10) men, two (2) of whom were armed. They used force, violence and intimidation against three (3) postal employees who were occupants of the van, resulting in the unlawful taking and transportation of the entire van and its contents.**

If you were the public prosecutor, would you charge the ten (10) men who hijacked the postal van with violation of Presidential Decree No. 532, otherwise known as the Anti-Piracy and Anti - Highway Robbery Law of 1974? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

No, I would not charge the ten (10) men with the crime of highway robbery.

The mere fact that the offense was committed on a highway would not be the determinant for the application of PD No. 532. If a motor vehicle, either stationary or moving on a highway, is forcibly taken at gun point by the accused, the location of the vehicle at the time of the unlawful taking would not be necessarily put the offense within the ambit of PD No. 532.

In this case, there is no showing that the ten (10) men were a band of outlaws organized for the purpose of depredation upon the persons and properties of innocent and defenseless inhabitants who travel from one place to another. Thus, the crime committed is the violation of the Anti-Carnapping Act of 1972.

- 369. While Carlos was approaching his car, he saw it being driven away by Paolo, a thief. Carlos tried to stop Paolo by shouting at him, but Paolo ignored him. To prevent his car from being carnapped, Carlos drew his gun, aimed at the rear wheel of the car and fired. The shot blew the tire which caused the car to veer out of control and collide with an incoming tricycle, killing the tricycle driver.**

What is the criminal liability of Paolo, if any? Explain.

SUGGESTED ANSWER:

Paolo, who acted with intent to gain, unlawfully took a motor vehicle belonging to Carlos, without the latter's consent with force upon things. Thus, he is liable for carnapping Section 3 of R.A. 10883, otherwise known as the “New Anti-Carnapping Act of 2016.”

S. Obstruction of Justice Law (Sec. 1, PD 1829)

- 370. Manolo revealed to his friend Domeng his desire to kill Cece. He likewise confided to Domeng his desire to borrow his revolver. Domeng lent it. Manolo shot Cece in Manila with Domeng's revolver. As his gun was used in the killing, Domeng asked Mayor Tan to help him**

escape. The mayor gave Domeng P5,000.00 and told him to proceed to Mindanao to hide. Domeng went to Mindanao. The mayor was later charged as an accessory to Cece's murder.

Can he be held liable for any other offense? Explain fully. (2008 Bar Question)

SUGGESTED ANSWER:

Mayor Tan is liable for the following offenses: (1) violation of P.D. 1829 for harboring or assisting in the escape of a person who has committed a crime or whom he knows has committed a crime, and (2) as an accessory under Art. 19(3) of the Revised Penal Code, being a public officer had acted with abuse of his public function to help Domeng escape.

371. A private person who assists the escape of a person who committed robbery shall be liable: (2011 Bar Question)

- A) as a principal to the crime of robbery.
- B) as an accessory to the crime of robbery.
- C) as a principal to the crime of obstruction of justice.
- D) as an accessory to the crime of obstruction of justice.

SUGGESTED ANSWER: C.

N.B.: B and C are the right answers.

T. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act (Secs. 3[a], 5, and 10, RA 7610)

372. Arnold, 25 years of age, was sitting on a bench in Luneta Park watching the statue of Jose Rizal when, without his permission, Leilani, 17 years of age, sat beside him and asked for financial assistance, allegedly for payment of her tuition fee, in exchange for sex. While they were conversing, police operatives arrested and charged him with violation of Section 10 of RA 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act), accusing him of having in his company a minor, who is not related to him, in a public place. It was established that Arnold was not in the performance of a social, moral and legal duty at that time.

Is Arnold liable for the charge? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

No, Arnold is not liable.

To be liable under Section 10 (b) of RA No. 7610, it is indispensable that the child in the company of the offender must be 12 years or under or 10 years or more his junior in a public place or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places.

In this case, Leilani is 17 years of age, who is 8 years younger than Arnold. Additionally, Leilani sat beside Arnold without his permission.

Hence, Arnold is liable for the crime charged.

FREQUENTLY ASKED TOPICS (2007 - 2017)

TOPIC				No. of Times Asked
REVISED PENAL CODE: BOOK I	Felonies	Circumstances affecting criminal liability	Mitigating circumstances	20
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Swindling / Estafa	Art 315	17
REVISED PENAL CODE: BOOK I	Felonies	Circumstances affecting criminal liability	Aggravating circumstances	16
REVISED PENAL CODE: BOOK I	Felonies	Persons liable and degree of participation	Principals, accomplices, and accessories	16
REVISED PENAL CODE: BOOK I	Felonies	Criminal liabilities and felonies	Complex crimes and composite crimes	14
REVISED PENAL CODE: BOOK I	Felonies	Criminal liabilities and felonies	Aberratio ictus, error in personae, and praeter intentionem	12
REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Death or physical injuries inflicted under exceptional circumstances	Art 247	12
REVISED PENAL CODE: BOOK I	Penalties	Application	Indeterminate Sentence Law (Act No. 4103)	11
REVISED PENAL CODE: BOOK I	Penalties	Execution and service	Juvenile Justice and Welfare Act (RA 9344, as amended)	10
SPECIAL LAWS	Comprehensive Dangerous Drugs Act of 2002	(Secs. 5, 11, 15, and 21, RA 9165, as amended by RA 10640)		10
REVISED PENAL CODE: BOOK I	General Principles	Mala in se vs. mala prohibita		9
REVISED PENAL CODE: BOOK I	Felonies	<i>Criminal liabilities and felonies</i>	Impossible crime	9

FREQUENTLY ASKED TOPICS (2007 - 2017)

REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Rape	Art 266-A	9
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Fraudulent insolvency. (Art. 314)		9
REVISED PENAL CODE: BOOK I	Felonies	Persons liable and degree of participation	Conspiracy and proposal	8
REVISED PENAL CODE: BOOK I	Felonies	Circumstances affecting criminal liability	Justifying circumstances	7
REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Parricide	Art 246	7
REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Homicide	Art 249	7
SPECIAL LAWS	Anti-Violence Against Women and their Children Act of 2004	(Secs. 3, 5, and 26, RA 9262)		7
REVISED PENAL CODE: BOOK I	Felonies	Circumstances affecting criminal liability	Exempting circumstances	6
REVISED PENAL CODE: BOOK I	Penalties	Execution and service	Probation Law (PD 968, as amended)	6
REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Art 248. Murder		6
REVISED PENAL CODE: BOOK II	Title Nine: Crimes against personal liberty and security	Art 292. Revelation of industrial secrets		6
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Theft	Art 308	6
REVISED PENAL CODE: BOOK I	General Principles	Applicability and effectivity of the RPC	Territoriality	5
REVISED PENAL CODE: BOOK I	Felonies	Criminal liabilities and felonies	Stages of execution	5
REVISED PENAL CODE: BOOK I	Penalties	Civil liability in criminal cases		5
REVISED PENAL CODE: BOOK II	Title Three: Crimes against public order	Evasion of service of sentence	Art 157	5
REVISED PENAL CODE: BOOK II	Title Four: Crimes against public interest	Falsification by public officer, employee or notary	Art 171	5

FREQUENTLY ASKED TOPICS (2007 - 2017)

REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Aiding and abetting a band of brigands. (Art. 307)		5
REVISED PENAL CODE: BOOK II	Title Twelve: Crimes against the civil status of persons	Performance of illegal marriage ceremony. (Art. 352)		5
REVISED PENAL CODE: BOOK II	Quasi-offenses (or Criminal Negligence)	Art. 365. Imprudence and negligence.		5
SPECIAL LAWS	Anti-Torture Act of 2009	(Secs. 3 [a, b], 4, and 5, RA 9745)		5
REVISED PENAL CODE: BOOK II	Title Two: Crimes against the Fundamental Law of the State	Art 133. Offending religious feelings		4
REVISED PENAL CODE: BOOK II	Title Three: Crimes against public order	Direct assaults	Art 148	4
REVISED PENAL CODE: BOOK II	Title Nine: Crimes against personal liberty and security	Art 268. Slight illegal detention		4
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Possession of picklocks or similar tools. (Art. 304)		4
REVISED PENAL CODE: BOOK II	Title Eleven: Crimes against Chastity	Adultery	Art 333	4
SPECIAL LAWS	Anti-Graft and Corrupt Practices Act	Sec. 3, RA 3019, as amended		4
SPECIAL LAWS	Anti-Plunder Act	(Secs. 1 and 2, RA 7080, as amended by RA 7659)		4
SPECIAL LAWS	Bouncing Checks Law	(Sec. 1, BP 22)		4
REVISED PENAL CODE: BOOK I	General Principles	Applicability and effectivity of the RPC	Generality	3
REVISED PENAL CODE: BOOK I	Felonies	Criminal liabilities and felonies	Grave vs. less grave vs. light felonies	3
REVISED PENAL CODE: BOOK I	Penalties	Penalties that may be imposed and retroactive effect of penal laws		3
REVISED PENAL CODE: BOOK I	Penalties	Duration and effects		3

FREQUENTLY ASKED TOPICS (2007 - 2017)

REVISED PENAL CODE: BOOK I	Penalties	Application	RPC provisions	3
REVISED PENAL CODE: BOOK I	Penalties	Extinction of criminal liability		3
REVISED PENAL CODE: BOOK I	Penalties	Art 90. Prescription		3
REVISED PENAL CODE: BOOK II	Title One: Crimes against National Security and Laws of Nations	Art 115. Conspiracy and proposal to commit treason		3
REVISED PENAL CODE: BOOK II	Title Four: Crimes against public interest	Falsification by private individuals and use of falsified documents	Art 172	3
REVISED PENAL CODE: BOOK II	Title Four: Crimes against public interest	Usurpation of authority or official functions	Art 177	3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	(4) Malicious delay in the administration of justice. (Art. 207)		3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Indirect bribery	Art 211	3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Corruption of public officials	Art 212	3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Article 216. Possession of prohibited interest by a public officer		3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Malversation of public funds or property	Art 217	3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Illegal use of public funds or property	Art. 220	3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Article 223. Conniving with or consenting to evasion		3
REVISED PENAL CODE: BOOK II	Title Seven: Crimes committed by Public Officers	Article 244. Unlawful appointments		3
REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Art 254. Discharge of firearms		3

FREQUENTLY ASKED TOPICS (2007 - 2017)

REVISED PENAL CODE: BOOK II	Title Eight: Crimes Against Persons	Less serious physical injuries	Art 265	3
REVISED PENAL CODE: BOOK II	Title Nine: Crimes against personal liberty and security	Art 267. Kidnapping and serious illegal detention		3
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Robbery with violence against or intimidation of persons. (Art. 294)		3
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Qualified theft	Art 310	3
REVISED PENAL CODE: BOOK II	Title Ten: Crimes against Property	Setting fire to property exclusively owned by the offender. (Art. 326)		3