

A Compilation of the
Questions and Suggested Answers
In the
PHILIPPINE BAR EXAMINATIONS 2007-2013
In
CRIMINAL LAW

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**ANSWERS TO BAR EXAMINATION QUESTIONS by the
UP LAW COMPLEX (2007, 2009, 2010) &
PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2008)**



FOREWORD

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The Authors.



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GENERAL PRINCIPLES

Equal Protection Clause (2013)

No. XI. 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%)? (10% total points)

SUGGESTED ANSWER:

I would advice Senator Salcedo to forgo and permanently 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. The equal protection clause in the Constitution 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 and put to naught if the bill's program/scheme should eventually become a law.

General Principles; Territoriality (2008)

No. VI. 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. (4%)

SUGGESTED ANSWER:



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) If Eunice gave her consent to the second marriage, what will your answer be? Explain. (3%)

SUGGESTED ANSWER:

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

General Principles; Constitutional Provision Limiting the Power of Congress to Enact Penal Laws (2012)

No. III. b. What are the constitutional provisions limiting the power of Congress to enact penal laws? (5%)

SUGGESTED ANSWER:

The constitutional provision limiting the power of Congress to enact penal laws are the following:

- 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.**

No person shall be held to answer for a criminal offense without due process of law.

FELONIES

Conspiracy (2012)

No. IX. a. Define conspiracy. (5%)

SUGGESTED ANSWER:

When two or more persons come to an agreement concerning the commission of a felony and decide to commit it, there is conspiracy.

Conspiracy (2008)

No. XI. 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. (7%)

SUGGESTED ANSWER:

No, there was no conspiracy between Ricky and the Commander of the vigilante. 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.

Conspiracy vs. Conspiracy to Commit Rebellion vs. Conspiracy to Commit Murder (2012)

No. IX. 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. (5%)

SUGGESTED ANSWER:

Conspiracy to commit rebellion – if “A” and “B” conspired to overthrow the government, conspiracy is punishable. Conspiracy to commit rebellion is a felony. Rebellion – if they committed rebellion, they are equally liable for the crime of *rebellion*. However, they will not be additionally charged with conspiracy to commit rebellion. Since they committed what they conspired,

conspiracy will not be considered as an independent felony but as a manner of incurring criminal responsibility. conspiracy to commit homicide, not punishable – if “A” and “B” conspire to kill “X”, conspiracy is not punishable. The law provides no penalty for conspiracy to be commit homicide. Homicide – if 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. Conspiracy in this case will be considered as a manner of incurring liability.

Impossible Crime of Murder (2009)

No. IV. a. 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? (3%)

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).

JUSTIFYING & EXEMPTING CIRCUMSTANCES

Exempting Circumstances (2007)

No. IV. a. 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. (10%)

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 in the light of the pronouncement in *People v Cosicor* (79 Phil. 672 [1947]) that banishment (*destierro*) is intended more for the protection of the offender rather than as a penalty. Since the civil liability under the Revised Penal Code is the consequence of criminal liability, there would be no legal basis for the award of indemnity when there is no criminal liability.

ALTERNATIVE ANSWER:

Yes, because the crime punishable by *destierro* was committed, which is death under exceptional circumstances under Art. 247 of the Revised Penal Code.

Exempting Circumstances; Accessories; Ascendants (2010)

No. XXII. 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. (3 %)

SUGGESTED ANSWER:

Obviously, Jake's mother was aware of her son's having committed a felony, such that her act of harboring and concealing him renders her liable as an accessory. But being an ascendant to Jake, she is exempt from criminal liability by express provision of Article 20 of the Revised Penal Code.

On the other hand, the criminal liability of Jake's aunt depends on her knowledge of his commission of the felony, her act of harboring and concealing Jake would render her criminally liable as accessory to the crime of murder; otherwise without knowledge of Jake's commission of the felony, she would not be liable.

Exempting Circumstances; Insanity (2010)

No. XIII. a. 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.

Will Romeo's defense prosper? Explain. (2%)

SUGGESTED ANSWER:

No, Romeo's defense of insanity will not prosper because, even assuming that Romeo was "insane" when diagnosed after he committed the crime, insanity as a defense to the commission of crime must have existed and proven to be so existing at the precise moment when the crime was being committed. The fact of the case indicate that Romeo committed the crime with discernment.

Exempting Circumstances; Insanity; Effect (2010)

No. XIII. 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? (2%)

SUGGESTED ANSWER:

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.

Justifying Circumstances; Battered Woman Syndrome (2010)

No. XIX. c. 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. (2%)

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.



MITIGATING CIRCUMSTANCES

Mitigating; Voluntary Surrender (2009)

No. XI. b. Voluntary surrender is a mitigating circumstance in all acts and omissions punishable under the Revised Penal Code.

SUGGESTED ANSWER:

False, Voluntary surrender may be appreciated in cases of criminal negligence under Art. 365 since in such cases, the courts are authorized to imposed a penalty without considering Art. 62 regarding mitigating and aggravating circumstances.

Privilege Mitigating Circumstance (2012)

No. II. a. What is a privileged mitigating circumstance? (5%)

SUGGESTED ANSWER:

Privileged mitigating circumstances are those that mitigate criminal liability of the crime being modified to one or two degrees lower. These circumstances cannot be off-set by aggravating circumstance. The circumstance of incomplete justification or exemption (when majority of the conditions are

present), and the circumstance of minority (if the child above 15 years of age acted with discernment) are privileged mitigating circumstances.

Privilege Mitigating Circumstance vs. Ordinary Mitigating Circumstance (2012)

No. II. b. Distinguish a privileged mitigating circumstance from an ordinary mitigating circumstance as to reduction of penalty and offsetting against aggravating circumstance/s. (5%)

SUGGESTED ANSWER:

The distinction between ordinary and privilege mitigating circumstances are: (a) Under the rules for application of divisible penalties (Article 64 of the Revised Penal Code), the presence of a mitigating circumstance, has the effect of applying the divisible penalty in its minimum period. Under the rules on graduation of penalty (Articles 68 and 69), the presence of privileged mitigating circumstance has the effect of reducing the penalty one or two degrees lower. (b) Ordinary mitigating circumstances can be off-set by the aggravating circumstances. Privileged mitigating circumstances are not subject to the off-set rule.



AGGRAVATING CIRCUMSTANCES

Aggravating Circumstances; Dwelling; Nocturnity; Use of Picklock (2009)

No. XVII. b. 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. (3%)

SUGGESTED ANSWER:

Dwelling is aggravating because the crimes were committed in the property of 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 although it was not

purposely or especially sought for by Wenceslao, nighttime was obviously taken advantage of by him in committing the other crimes. Under the objective test, nocturnity is aggravating when taken advantage of by the offender during the commission of the crime thus facilitating the same. The use of a picklock to enter the room of the victim is not an aggravating circumstance under Art. 14 of the Code but 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.

Specific Aggravating Circumstance; Use of Unlicensed Firearm (2009)

No. I. c. The use of an unlicensed firearm in homicide is considered a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance.

SUGGESTED ANSWER:

False, offsetting may not take place because the use of an unlicensed firearm in homicide or murder is a specific aggravating circumstance provided for by Rep. Act. No. 8294. It is not one of the generic aggravating circumstances



under Article 14 of the Revised Penal Code (People v. Avecilla, 351 SCRA 63 [2001]).

PERSONS CRIMINALLY LIABLE FOR FELONIES

Accomplice (2012)

No. V. a. Who is an accomplice? (5%)

SUGGESTED ANSWER:

Accomplices are those persons who, not being a principal, cooperate in the execution of the offense by previous or simultaneous acts (Article 18)

Accomplice (2009)

No. V. a. 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.

What, if any, is the liability of Ruben? Explain. (3%)

SUGGESTED ANSWER:

Ruben's liability is that of an accomplice only because he merely cooperated in Ponciano's determination to kill Freddie. Such cooperation is not indispensable to the killing, as in fact the killing was carried out without the use of Ruben's gun. Neither way Ruben may be regarded as a co-conspirator since he was not a participant in the decision-making of Ponciano to kill Freddie; he merely cooperated in carrying out the plan which was already in place (Art. 18, RPC).

ALTERNATIVE ANSWER:

Ruben cannot be held liable as an accomplice in the killing of Freddie because his act of lending his gun to Ponciano did not have the relation between the acts done by the latter to that attributed to Ruben. Even if Ruben did not lend his gun, Ponciano would have consummated the act of killing Freddie. In other words, Ruben's act in lending his gun was not a necessary act to enable Ponciano to consummate the crime.

Accomplice (2009)

No. V. b. 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.

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. (3%)

SUGGESTED ANSWER:

No, the answer would not be the same because Ruben lent his gun purposely for the killing of Freddie only, not for any other killing. Ponciano's using Ruben's gun in killing a person other than Freddie is beyond Ruben's criminal intent and willing involvement. Only Ponciano will answer for the crime against Manuel.

It has been ruled that when the owner of the gun knew it would be used to kill a particular person, but the offender used it to kill another person, the owner of the gun is not an accomplice as to the killing of the other person. While there was community of design to kill Freddie between Ponciano and Ruben, there was none with respect to the killing of Manuel.

ALTERNATIVE ANSWER:

Yes, the answer would be the same because Ruben lent his gun to Ponciano with knowledge that it would be used in killing a person, thus with knowledge that the gun would be use to commit a crime. It is of no moment who was killed so long as Ruben is aware when he lent the gun that it would be used to commit a crime.

Accomplice vs. Conspirator (2012)

No. V. b. 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. (5%)

SUGGESTED ANSWER:

The differences between accomplice and conspirator are as follows:

	Accomplices	Conspirator
Knowledge of the criminal design of the	They know and agree with the criminal design.	They know of and join in the criminal design. They know the



principal	They come to know it after the principals have reached the decision and only then do they agree to cooperate in its execution	criminal intention because they themselves have decided upon such course of action.			specifically prescribes a penalty therefor.
Prerequisites			(1) The community of criminal design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose ; and	(1) That two or more persons came to an agreement;	
Participation	Accomplices are mere instrument who perform acts not essential to the commission of the crime.	Conspirators are the authors of the crime.	he concurs with the latter in his purpose ; and	(2) That the agreement concerned the commission of a crime; and	
Penalty	One degree lower than that of a principal.	Same as principal. Note: Conspiracy alone is not punishable, except in cases where the law	(2) The performance of previous or simultaneous acts	(3) That the execution of the felony was decided	

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	that are not indispensable to the commission of the crime.	upon.
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Accomplice vs. Conspirator (2007)

No. V. a. Distinguish between an accomplice and a conspirator. (10%)

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.

Anti-Fencing Law; Fencing (2013)

No. VI. 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? (7%)

SUGGESTED ANSWER:

I will charge Roberto with violation of Anti-Fencing Law. The elements of "fencing" are: 1) a robbery or theft has been committed; 2) the accused, who took no part in the robbery or theft, "buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken" during that robbery or theft; 3) the accused knows or should have known of that the thing was derived from that crime; and 4) by the deal he makes he intends to gain for himself or for another. Here, someone

carnapped the vehicle, old it to Roberto who did not take part in the crime. Roberto should have known also that the car was stolen because it was not properly documented as the deed of sale and registration certificate did not reflect the correct numbers of the vehicle's engine and chassis. Apparently, he made no effort to check the papers covering his purchase. Lastly, Roberto's defense of good faith is flawed because Presidential Decree 1612 is a special law and, therefore, its violation is regarded as malum prohibitum, requiring no proof of criminal intent (Dimat v. People, GR No. 181184, January 25, 2012).

ALTERNATIVE ANSWER:

The facts given show that Roberto "bought" the car from Inigo; that a "deed of sale" covering the subject vehicle was executed by Inigo; that there is also a copy of the "Registration Certificate"; that Roberto aver, too, of being a buyer in good faith and lacking of any knowledge that the subject car is a carnapped vehicle.

As against the foregoing, there is only a certificate from the Land Transportation Office showing that the vehicle had been previously reported as carnapped.

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 Riberto for any wrongdoing.

Anti-Fencing Law; Fencing (2010)

No. V. 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? (5%)

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 a theft or robbery of the article subject of the

alleged "fencing" has been committed – fact which I want in this case.

It should be noted that the suspect is engaged in the buy and sell of used garments, which are in the nature of movable property carries with it a *prima facie* presumption of ownership. The presumption of "fencing" arises only when the article or item involved is the subject of a robbery or thievery (Sec. 5, PD 1612).

Anti-Fencing Law; Fencing (2009)

No. XI. c. 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.



Criminal Liability; Accessories (2013)

No. III. 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? (7%)

SUGGESTED ANSWER:

Abelardo is not criminally liable.

To be criminally liable as an accessory under Article 19 of the Code, such person must have knowledge of the commission of the crime. The term “knowledge “ under the law is not synonymous with suspicion. Mere suspicion that the crime has been committed is not sufficient.

Moreover, the facts as given in the problem would show lack or absent of intent to conceal the effects of the crime as Abelardo is described as being “unsure of what to do under the circumstances.”

Even if he can be considered as an accessory under paragraph 2 of Article 19, RPC, Abelardo is not liable, being the brother of Modesto under Article 20, RPC.

PENALTIES

Delito Continuado (2009)

No. XIII. a. 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*? (1%)



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.**

Habitual Delinquency (2012)

No. VIII. a. Who is a habitual delinquent? (5%)

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 Revised Penal Code).

Habitual Delinquency vs. Recidivism (2012)

No. VIII. b. 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. (5%)

SUGGESTED ANSWER:

Difference between recidivism and habitual delinquency:

- (a) ***Nature of crime*** – in recidivism, the first crime, and the aggravated second crime are embraced in the same Title of the Revised Penal Code. In habitual delinquency, the first, second and third crimes must be a habitual-delinquency crime, and that is, serious or less serious physical injuries, theft, robbery, estafa or falsification of document.
- (b) ***Time element*** – in recidivism, the accused was convicted of the first crime by final judgment at the time of trial of the second crime. In habitual delinquency, the accused was convicted of the first habitual-delinquency crime; within 10 years after conviction or release, he was found guilty of habitual-delinquency crime for the second time; within 10 years after conviction or release he was found guilty of habitual-



delinquency crime for the third time or oftener.

(c) Number of crimes – in recidivism, there must be at least two crimes committed; while in habitual delinquency, there must be at least three crimes committed.

Nature of the aggravating circumstance

– recidivism is ordinary aggravating circumstance, the presence of any which will trigger the application of the penalty for the second crime committed in its maximum period unless it is off-set by a mitigating or special aggravating circumstance, the presence of which will trigger the imposition of additional penalty for the third or subsequent crime. This is not subject to the off-set rule.

Heinous Crimes Law (2010)

No. IV. 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. (5%)

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, such as the Revised Penal Code as the case may be. The circumstances making the crimes heinous may be alleged as qualifying or generic aggravating, if proper. The crime shall be designated as defined and punished under the penal law violated and the penalty shall be reclusion perpetua without the benefit of parole, as the case may be in lieu of the death penalty.



Indeterminate Sentence Law (2012)

No. VI. b. How is the Indeterminate Sentence Law applied in imposing a sentence? (5%)

SUGGESTED ANSWER:

If crime is punishable under the Revised Penal Code, the court shall sentenced 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).

Indeterminate Sentence Law (2007)

No. IV. b. 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.

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.

SUGGESTED ANSWER:

No, Macky s 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".

ALTERNATIVE ANSWER:

No, because the penalty for use of any dangerous drug by a first offender is not imprisonment but rehabilitation in a



government center for a minimum period of six (6) months (Sec. 15, R.A. 9165). The Indeterminate Sentence Law does not apply when the penalty is imprisonment not exceeding one year.

Indeterminate Sentence Law; Homicide (2010)

No. I. 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 *prison 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 *prison correccional* only. Who of the three is on the right track? Explain. (3%)

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 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.

Indeterminate Sentence Law; Homicide (2009)

No. XII. 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. Explain. (3%)

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 within 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.



Indeterminate Sentence Law; Illegal Possession of Drugs (2009)

No. XII. 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? (3%)

SUGGESTED ANSWER:

No, my answer will not be the same because violations of Rep. Act 9165 are *mala prohibita* in which mitigating and aggravating circumstances are not appreciated. Although in *People v. Simon* (234 SCRA 555[1994]), it was held that Art. 64 can be applied if the special law adopted the nomenclature of penalties provided under the RPC, such pronouncement cannot be applied in the instant case because the for illegal possession of drugs under R.A. 9165 do not follow the technical nomenclature of penalties in the RPC and thus, cannot be divided into periods. Hence, the existence of mitigating and aggravating circumstances cannot be appreciated.

Penalties; Civil Liability (2010)

No. XVIII. b. 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. (2%)

SUGGESTED ANSWER:

Eva Marie may incur civil liability if the owner of the puppy would incur a loss due to non-restitution or return thereof to the owner. 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 (Art. 308 par. 1). Once Eva Marie is found guilty of theft, she will incur civil liability, which consists of restitution or reparation for damage caused and indemnification for consequential damages (Art. 100 RPC). The general rule is: a person who is criminally liable is also civilly liable.

Penalties; Homicide (2013)

No. I. 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? (7%)

SUGGESTED ANSWER:

Bruno should be sentenced to an indeterminate sentence penalty of *arresto mayor* in any of its period to *prision correccional* in its medium period as maximum. Bruno was entitled to two privileged mitigating circumstances of incomplete self-defense and the presence of at least two ordinary mitigating circumstances without any aggravating circumstance under Articles 69 and 64(5) of the Revised Penal Code, respectively, which lower the prescribed penalty for homicide which is *reclusion temporal* to *prision correccional*.

There is incomplete self-defense because Bruno proved that it wa the victim who

first attacked him and did so without provocation of his part. There is, however, no reasonable necessity of the means employed to defend himself, after Bruno used a knife to stab the weaponless victim. 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. In contrast, there are two mitigating circumstances, namely, voluntary surrender and plea of guilt. Applying the Indeterminate Sentence Law, the maximum term of the medium period and the minimum term should be within the range of the penalty next lower in degree or *arresto mayor* in any of its period.

**Penalties; Perpetual Absolute
Disqualification (2007)**

No. I. What are the penalties that may be served simultaneously? (10%)

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;**

Fine; and any principal penalty with its accessory penalties.

Penalties; Reclusion Perpetua vs. Life Imprisonment (2009)

No. XI. a. Life imprisonment is a penalty more favorable to the convict than *reclusion perpetua*.

SUGGESETD 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 fixed duration of 40 years and the convict may be eligible for pardon after 30 years of imprisonment (People v. Penillos, 205 SCRA 546 [1992]).

Probation Law; Period Covered (2009)

No. XV. c. 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 impossible for the consummated felony? Explain. (2%)

SUGGESTED ANSWER:

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

Even if it would be considered that the crime committed was punishable by death, the penalty as far as Joe I concerned can only be *reclusion perpetua* because RA 9344 forbids the imposition of the capital punishment upon offenders thereunder.



The murder being attempted only, the prescribed penalty is two degree lower than reclusion perpetua; hence, *prision mayor*. Because Joe was 17 years old when he committed the crime, the penalty of *prision mayor* should be lowered further by one degree because his minority is a privilege mitigating circumstance; hence, *prision correccional* or imprisonment within the range of ix months and 1 day to 6 years is the imposable.

Probation Law; Oder Denying Probation (2010)

No. XX. 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. (3%)

SUGGESTED ANSWER:

The brother's petition for prohibition 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."

Suspension of Sentence; Adults/Minors (2013)

No. V. 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? (7%)

SUGGESTED ANSWER:

The benefits of a suspended sentence can no longer apply to Machel. The suspension of sentence lasts only until the law reaches the maximum age and thus, could no longer be considered a child for purposes of applying Rep. Act No. 9344. 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 (People v. Jacinto, GR No. 182239, March 16, 2011; People v. Salcedo, GR. No. 186523, June 22, 2011; Padua v. People, GR No. 1683, July 23, 2008 and People v. Sarcia, GR No. 169641, September 10, 2009).

Suspension of Sentence; Adults/Minors (2009)

No. XV. b. 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. (2%)

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.

EXTINCTION OF CRIMINAL LIABILITY

Amnesty (2009)

No. II. 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. (4%)

SUGGESTED ANSWER:

Yes, I will grant the petition because the sentence evaded proceeded from the offender as a crime of Rebellion which has been obliterated by the grant of amnesty to the offender (Art. 89[3], RPC).

Since the amnesty erased the criminal complexion of the act committed by the offender as a crime of rebellion and rendered such act a though innocent, the sentence lost its legal basis. The purported evasion thereof therefore cannot subsist (People v. Patriarca, 341 SCRA 464[200]).

Amnesty obliterates, not only the basis of conviction, bur also all the legal effect thereof.

Pardon; Effect (2009)

No. I. a. Amado, convicted of rape but granted an absolute pardon by the President, and one year thereafter, convicted of homicide, is a *recidivist*.

SUGGESTED ANSWER:

True, rape is now 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 granted him for rape, only excuse him from serving the sentence for rape but did not erase the effect of the conviction therefore unless expressly remitted by the pardon.

Prescription of Crimes; Commence to Run (2010)

No. XVII. a. 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? (1%)

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).

Prescription of Crimes; Discovery Rule (2009)

No. VI. 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. (3%)

SUGGESTED ANSWER:

No, Baldo's contention is not correct because the crime committed has not yet prescribed. The prescriptive period of the crime committed commenced to run only after it was report to the police on January 2, 1970, not on the date it was clandestinely committed on January 2, 1960. Under the discovery rule, which govern 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: in this case, from January 2, 1970 when it made known to the police authorities until January 2, 1980, when Baldo was arrested and charged. The killing committed, whether homicide or murder, is punishable by an afflictive penalty which prescribes within twenty (20) year, whereas only around ten (10) years ha lapsed from January 2, 1970 (when the authorities discovered the commission of the crime) to January 2, 1980 (when the accused was charged in court).



Prescription of Crimes; Interrupted (2010)

No. XVII. b. 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? (1%)

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" (Panaguiton, Jr. v. Dept. of Justice, G.R. No. 167571, Nov. 25, 2008).

Prescription of Crimes; Parricide (2010)

No. XVII. c. 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. (3%)

SUGGESTED ANSWER:

No, the defense of prescription of the crime is not tenable. The crime committed is parricide which prescribes in twenty (20) years (Art. 90, RPC). It was only when the care-taker, Z found the victim's bones and reported the matter to the police that the crime is deemed legally discovered by the authorities or their agents and thus the prescriptive period of the crime commenced to run.

When A left the country and returned only after three (3) year, the running of the prescriptive period of the crime is interrupted and suspended because prescription shall not run when the offender is absent from the Philippine Archipelago (Art. 91, RPC).



Since A had been in hiding for 15 years after the commission of the crime and the prescriptive period started running only after 5 years from such commission when the crime was discovered, only 10 years lapsed and 3 years thereof should be deducted when the prescriptive period was interrupted and suspended. Hence, the 3 years.

CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

Misprision of Treason (2010)

No. XXI. 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 had 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. (3%)

SUGGESTED ANSWER:

Yes, Myra committed the crime of Misprision of Treason under Art. 116 of the Revised Penal Code, for failing to report or make known "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 in time of war. She decided to report the matter to the proper authorities only after two (2) weeks.

Qualified Piracy; Special Complex Crime (2008)

No. VII. a. 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 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 person (Max, Baldo and Bogart) who boarded the inter-island vessel correct? Explain. (3%)

Yes, they (Max, Baldo and Bogart) boarded and fired upon the ship, and divested the passengers of their money and jewelry (Art. 122, 123, RPC, as amended by R.A. 7659 and P.D. 532). As long as murder or homicide is committed as a result of or on occasion of piracy, the special complex crime of qualified piracy is committed.

CRIMES AGAINST THE FUNDAMENTAL LAW OF THE STATE

Arbitrary Detention; Unlawful Arrest; Extralegal Killing (2008)

No. I. a. 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. (3%)

SUGGESTED ANSWER:

Yes, the respondent military officers may be criminally charged in court since

“enforced disappearance” constitutes arbitrary detention under Art. 124 or Unlawful Arrest under Art. 269 of the RPC. Extralegal killing can also be considered murder and/or homicide under Art. 248/249, RPC.

ALTERNATIVE ANSWER:

The petition for the writ of amparo is not a criminal proceeding and will not determine the guilt of the respondents. If the evidence so warrants, the amparo court may refer the case to the Department of Justice for criminal prosecution (A.M. No. 07-9-12-SC) of the military officers for the special complex crime of kidnapping with murder or homicide under Art. 267 of the Revised Penal Code as amended by R.A. 7659.

Violation of Domicile (2009)

No. I. e. A policeman who, without a judicial order, enters a private house over the owner’s opposition is guilty of trespass to dwelling.

SUGGESTED ANSWER:

False, the crime committed by the policeman in this case is violation of domicile because the official duties of a policeman carry with it an authority to



make searches and seizure upon judicial order. He is therefore acting under color of his official authority (Art. 128, RPC).

CRIMES AGAINST PUBLIC ORDER

Delivering Prisoners from Jail; Corruption of Public Officials (2013)

No. X. 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 Big. 22 (The Bouncing Checks Law).

Was the charge brought against Frank correct? (7%)

SUGGESTED ANSWER:

Yes, the charges brought against Frank is correct. Violation of BP 22 is *malum prohibitum* which is committed by mere issuance of a check. Good faith is not a defense. As long as the check was issued on account or for value, the purpose for

which the check was issued, the terms and conditions relating to the issuance are irrelevant to the prosecution of the offender. For this reason, the request of Frank to defer the deposit of the check as it has insufficient funds will not militate against his prosecution for BP 22. Despite notice, Frank can still be charged.

Moreover, if what is charged is Estafa, Frank, being a brother of the offended party, cannot be held criminally liable under Article 332, RPC.

Delivering Prisoners from Jail; Corruption of Public Officials; Falsification of Public Documents (2009)

No. X. 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. (5%)

SUGGESTED ANSWER:

The crime committed in this case are as follows:

- a. **Chito committed the crimes of –**
1. **Delivery of Prisoners from Jail (Art. 156, RPC) for working out the escape of prisoners Willy and Vincent;**
 2. **Two counts of Corruption of Public Officials (Art. 212, RPC); and**
 3. **Falsification of Public Documents, as a principal by inducement (Art. 172[1], RPC).**
- 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 forgoing 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 forgoing 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.

Direct Assault (2013)

No. VII. 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 Dencio, another student, intervened. Mariano then turned his ire on Dencio and punched him repeatedly, causing him injuries.

What crime or crimes, if any, did Mariano commit? (7%)

SUGGESTED ANSWER:

Mariano is liable for two counts of direct assault. First, when he slapped Miss Reyes, who 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. Second, when he repeatedly punched Dencio, who became an agent of the person in authority when he came to the aid of a person in authority, Miss Reyes (Celig v. People, GR No. 173150, July 28, 2010).



Direct Assault (2009)

No. III. 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? (3%)

SUGGESTED ANSWER:

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) 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. (3%)

SUGGESTED ANSWER:

Yes, Rigoberto is guilty of Direct Assault because the employment of violence was by reason of an actual performance of a duty by the offended party acting as a practicing lawyer. Lawyers are considered persons in authority by virtue of Batas Pambansa Blg. 873, which states that lawyers in the actual performance of their professional duties or on the occasion of such performance shall be deemed persons in authority. But the crime having been committed 10 years ago, may have already prescribed because it is punishable by a correctional penalty.

Inciting to Sedition; Acts (2007)

No. VI. What are the different acts of inciting to sedition? (10%)

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).

CRIMES COMMITTED BY PUBLIC OFFICERS

Bribery (2010)

No. II. b. May a judge be charged and prosecuted for such felony? How about a public prosecutor? A police officer? Explain. (5%)

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.

On the other hand, a public prosecutor may be prosecuted for this crime in respect of the bribery committed, aside from dereliction of duty committed in violation of Art. 208 of the Revised Penal Code, 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.

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

Maliciously Refraining from Instituting or Prosecuting an Offender (2008)

No. IV. a. 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. (4 %)

SUGGESTED ANSWER:

If Domeng is not the principal to the crime of murder, the Mayor may not be held liable as accessory since he merely assisted in the escape of an accomplice. Par. 3 of Art. 19, RPC speaks of harboring or assisting in the escape of a principal. The mayor, however can be held liable as principal in the crime of maliciously refraining from instituting or prosecuting an offender under Art. 208 of the RPC.

ALTERNATIVE ANSWER:

If Domeng is a principal by indispensable cooperation, the mayor can be held liable as an accessory to the murder under Art. 19 (3), RPC.

Malversation (2009)

No. XVI. 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. (4%)

SUGGESTED ANSWER:

The charge of malversation through falsification is not correct because the falsification of several documents were not necessary means to obtain the money that were malversed, the falsifications were committed to cover up or hide the malversation and therefore, should be separately treated from malversation. The given facts separately treated from malversation. The given facts state that Roger and Jessie falsified disbursement vouchers and supporting documents “in order to make it appear” that qualified recipients received the money. Art. 48, RPC on complex crime is not applicable.

They should be charged of violation of section 3(e) of RA 3019 for the breach of public trust and due injury cause to the



Government. The violation is a crime *malum prohibitum*.

Malversation (2008)

No. V. b. 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, is any? Explain (3%)

SUGGESTED ANSWER:

PO1 Melvin committed the crime of malversation of property under Art. 217, RPC since the subject ring appears to be his accountability and the act of pawning the same constitutes misappropriation.

Malversation (2008)

No. XIV. a. 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. (4%)

SUGGESTED ANSWER:

Eliseo committed Malversation for allowing Myrna to misappropriate the money for which he, as Sheriff, is accountable (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) Would your answer to the first question be the same if ABC Corporation were a private corporation? Explain. (3%)

SUGGESTED ANSWER:

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.

Malversation; Falsification (2008)

No. X. 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. (6%)

SUGGESTED ANSWER:

In *Peo. v. Villanueva*, the Supreme Court held that the mail carrier is guilty of malversation and falsification.

In *US v, Gorospe*, 31 Phil, the Supreme Court ruled the crime is infidelity in the custody of documents.

He can be charged with qualified theft since the property stolen is mail matter (*Marcelo v. Sandiganbayan*).

He may also be charged with forgery under Art. 169 (2) RPC, because there was a material alteration on a genuine document (Luis B. Reyes, The Revised Penal Code, Volume II, page 198, 16th Edition [2006] citing *US v. Solito*, 36 Phil 785).

He may be charged with 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.

Qualified Bribery (2010)

No. II. a. What is the crime of qualified bribery? (2%)

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, RPC).



CRIMES AGAINST PERSONS

Complex Crime; Rape with Homicide & Theft (2009)

No. XVII. a. 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. (4%)

SUGGESTED ANSWER:

Wenceslao committed the following crimes: (1) the special complex crime of rape with homicide (2) theft and (3) unlawful possession of picklocks and similar tools under Art. 304, RPC. His act of having carnal knowledge of Loretta against her will and with the use of force and violence constituted rape, plus the killing of Loretta by reason or on the occasion of the rape, gave rise to the special complex crime of rape with homicide. Since the taking of the jewelry was an afterthought as it was done only when he was about to leave the room and when Loretta was already dead, the

same constitutes theft. His possession and use of the picklock "without lawful cause" is by itself punishable under Art. 304, RPC.

Criminal Liabilities; Rape; Frustrated Homicide or Murder; Theft; Use of Picklock (2009)

No. XVII. c. 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] be the same if, despite the serious stab wounds she sustained, Loretta survived? Explain. (3%)

SUGGESTED ANSWER:

No, the answer will be different. In that case, the crime committed would 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, RPC. The special complex crime of rape with homicide is constituted only when both of them are



not consummated, they are to be charged and punished separately. In any event, the possession of the picklock “without lawful cause”, more so its use in an unlawful entry is punishable as a crime by itself.

Death Caused in a Tumultuous Affray (2010)

No. X. 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. (4%)

SUGGESTED ANSWER:

No, the charge of death caused in a tumultuous affray will not prosper. In death caused by tumultuous affray under Art. 251 of the Revised Penal Code, it is essential that the persons involved did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally.

In this case, there is no tumultuous affray since the participants in the rumble belong to organized fraternities. 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.

Giving Assistance to Suicide (2008)

No. VIII. 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. (5%)

SUGGESTED ANSWER:

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



Homicide; Stages of Execution (2012)

No. X. a. 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. (5%)

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 in conclusive presumed and the crime committed is consummated homicide. Because of this conclusive presumption, lack of intent to kill is not a defense in consummated homicide. (Note: In consummated homicide, the accused may provide lack of intent to kill for purpose of appreciating the mitigating circumstance of *praeter intentionem*). 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 produced the homicide as a consequence. Hence, the crime is frustrated or consummated homicide. 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. In this situation, all the elements necessary for execution and accomplishment of homicide are present if the victim die due to wounds inflicted with the offender with intent to kill.



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 I 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.

Less Serious Physical Injuries (2009)

No. IV. b. 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. (3%)

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. It cannot constitute attempted murder, although done with intent to kill, because the means employed is inherently ineffectual to cause death and the crime committed must be directly linked to the means employed, not to the intent. Liability for an impossible crime can only arise from a consummated act.

Less Serious Physical Injuries; Simple Negligence (2007)

No. IX. 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. (10%)

SUGGESTED ANSWER:

The crime committed by Rafael is Simple Negligence Resulting in Less Serious Physical Injuries. Rafael is a security guard and was on duty when he discharged the firearm. The discharge of the firearm was not calculated to cause alarm or danger but simply to ward off the unruly crowd which persisted in moving forward, thereby challenging the duty he was to fulfill there. The discharge of the firearm, therefore, should neither constitute a crime of Alarms and Scandal under Art. 155 of the Revised Penal Code nor may such discharge amount to a crime of Illegal Discharge of Firearms under Art. 254 of the Code since it was not directed towards a particular person when the firearm was discharged.

However, the physical injuries resulting from the discharge of the firearm betrays a lack of precaution in a situation where the danger to the discharge of the firearm is not clearly manifest, thus considered as simple imprudence only. The crime committed is Simple Imprudence Resulting In Less Serious Physical Injuries, since the physical injuries required only twelve (12) days of medical attention.

ALTERNATIVE ANSWER:

The crime is reckless imprudence resulting in less serious physical injuries, because the discharge of the firearm was not necessary under the circumstances and therefore, Rafael should be aware of the possibility of injuries that could result from such discharge of the firearm.

Murder; Frustrated; Qualified Treachery (2009)

No. XIV. 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? (3%)

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.

Murder; Reckless Imprudence (2007)

No. VII. Eddie brought his son Randy to a local faithhealer known as "Mother *Himala*." He was diagnosed by the faithhealer 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 faithhealer and three 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. (10%)

SUGGESTED ANSWER:

No, the conviction of murder should not be sustained, because there is no indication that the accused acted with intent to kill Randy. On the contrary, the facts show that the accused acted to “treat” the victim in a way of driving the evil spirit which was believed to have “possessed” him. Considering that proximate cause of the victim's death was the healing ritual done by the accused which is not recognized in law as legitimate, the accused are criminally liable for the victim's death. As they may have overdone the “healing ritual” they conducted on the victim's body,



causing the latter's death, although the intent to kill was absent, the accused may be held criminally liable for Reckless Imprudence Resulting in Homicide.

ALTERNATIVE ANSWER:

No, because none of the circumstances qualifying the killing to murder in Art. 248 attended the crime.

The faithhealer and his co-accused should only be liable for homicide, because they are not authorized by law to practice medicine and were therefore acting illegally although the wrongful act done was different form what they intended.

Murder; Treachery (2008)

No. XV. 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 inti an open window of the bedroom where Antonio, his wife and their three 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. (7%)

SUGGESTED ANSWER:

Roger & 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. 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.

- 2. Art. 23, R.A. 7659 – organized/syndicated crime group.**

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Acts of Lasciviousness (2009)

No. XVIII. b. 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. (3%)

SUGGESTED ANSWER:

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 continues 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. So where the dance ended, Leoncio's continued dirty acts cannot be veiled as still part of dancing.

Exploitation of Child Labor (2009)

No. I. b. 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

SUGGESTED ANSWER:

False, the proper offense is exploitation of child labor (Art. 273, RPC). Exploitation of child labor 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.

Kidnapping and Serious Illegal Detention (2009)

No. IX. 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. (5%)

SUGGESTED ANSWER:

The crime committed against Jeremias, the 6 year-old child, is Kidnapping with Serious Illegal Dtention under Art. 267(4), RPC. The evident criminal intent of the offender, Virgilio, is to lock up the child 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 is Serious Illegal Detention because the offended party deprived of liberty is a female (Art. 267, par.4, RPC).

As to Juanito, the driver of the van who was seriously intimidated with a gun pointed at him and directed to stop the van and allow the gun-man to board the same, and thereafter to drive to a deserted place, the crime committed by Virgilio I Grave Coercion (Art. 286, RPC) and Slight Illegal Detention (Art. 268, RPC) for holding the driver before he was allowed to go.

Kidnapping and Serious Illegal Detention with Rape (2013)

No. II. 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 everyday 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? (7%)

SUGGESTED ANSWER:

Felipe, Julio, Roldan and Lucio are all liable of the special complex crime of kidnapping and serious illegal detention with rape. It was sufficiently proved that the four kidnapped Madrid and held her in detention for five days and carnally abused her. Notably, however, no matter how many rapes have been committed in the special complex crime of kidnapping with rape, the resultant crime is only one kidnapping with rape. The composite acts are regarded as a single indivisible offense with only one penalty. The offense is not forcible abduction with rape since it was obvious that the intent is to detain the victim.

As to the degree of their participation, all of them are principally liable because of implied conspiracy as they acted toward a single criminal design or

purpose (People v. Miranda, Jr., GR No. 186417, July 27, 2011). Albeit, Lucio was not around when the sexual assault took place, his complicity is evident as he was the one who drove the tricycle and returned every day to bring food and news to his cohorts.

Light coercion (2007)

No. X. 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. (10%)

SUGGESTED ANSWER:

The crime committed by Giovanni is light coercion under Art. 287 of the Revised Penal Code, commonly referred to as unjust vexation. Although what was done by Giovanni could reasonably be assumed as a retaliation to the lessee's refusal to pay rent, absent any clear violence in the premises, such would not bring about a case of grave coercion. The situation should be interpreted liberally



in favor of the offender. The rule of pro reo precludes any finding for grave coercion, because it would be against the offender.

The written warning which states “or else something may happen to you” is so equivocal that it may not be interpreted as felonious. A crime is never presumed; it is contrary that is presumed.

ALTERNATIVE ANSWER:

The crime committed by Giovanni is grave coercion because barricading one of the sides of the market stall was an act of violence deliberately done. It is not only an act of unjust vexation or light coercion but of grave coercion.

Unjust Vexation (2010)

No. VII. 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. (5%)

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. Instead of the crime of acts of lasciviousness although the offender is known for his voyeurism.

Our Revised Penal Code inclines towards milder criminal responsibility, consistent with the presumption of innocence under our system applying penal laws. Holding the hip of a person is not per se lascivious but undoubtedly annoys, irritates, and vexed the young offended party. The attitude to prosecute the offender for the milder crime of unjust vexation may be proper considering his age and civil status.

Unjust Vexation (2009)

No. XVIII. a. 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. (3%)

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 part of a dirty 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 simply be presumed from the act of dirty dancing. The fact that the act was perpetrated in a public place and with an audience, negates lewd design or lascivious intent, which is essential in the crime of acts of lasciviousness.

CRIMES AGAINST PROPERTY

Brigandage; Brigands (2012)

No. VII. a. Who are brigands? (5%)

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 of the Revised Penal Code).

Brigandage vs. Robbery in Band (2012)

No. VII. a. Distinguish brigandage from robbery in band as to elements, purpose of the of fender and agreement among the offenders. (5%)

SUGGESTED ANSWER:

The following distinction between brigandage and robbery by band: The main object of the Brigandage Law is to prevent the formation of bands of robbers. The heart of the offense consists in the formation of a band by more than three armed persons for the purpose indicated in Article 306 of the Revised Penal Code. Such formation is sufficient to constitute a violation of Article 306. It would not be necessary to show, in a prosecution under it, that a member or members of the band actually committed robbery or kidnapping or any other purpose attainable by violent means. The crime is proven when the organization and purpose of the band are shown to be such as are contemplated by Art. 306. On the other hand, if robbery or kidnapping, etc., the crime would not be brigandage, but only robbery. Simply



because robbery was committed by a band of more than three armed persons, it would not follow that it was committed by a band of brigands. In the Spanish text Article 306, it is required that the band “sala a los campos para dedicarse a robar” (People v. Puno, G.R. No. 97471, February 17, 1993).

ALTERNATIVE ANSWER:

	Brigandage	Robbery in Band
Elements	<ol style="list-style-type: none"> 1. There are at least 4 persons; 2. They form a band of robbers; 3. The purpose is any of the following: (see below) 	<p>More than three armed malefactor s take part in the commissio n of a robbery.</p>
Purpose	<ol style="list-style-type: none"> 1. Commit robbery in a highway; 2. Kidnap to extort or get 	<p>Commit robbery, but not necessarily in a highway.</p>

	<p>ransom;</p> <p>3. Any other purpose to be achieved by means of force or violence.</p>	
Agreement	<p>The agreement among more than three armed men is to commit robbery in the highway.</p>	<p>The agreement is only to commit a particular robbery.</p>

BP 22 (2013)

No. X. 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 Big. 22 (The Bouncing Checks Law).



Was the charge brought against Frank correct? (7%)

SUGGESTED ANSWER:

Yes, the charges brought against Frank is correct. Violation of BP 22 is *malum prohibitum* which is committed by mere issuance of a check. Good faith is not a defense. As long as the check was issued on account or for value, the purpose for which the check was issued, the terms and conditions relating to the issuance are irrelevant to the prosecution of the offender. For this reason, the request of Frank to defer the deposit of the check as it has insufficient funds will not militate against his prosecution for BP 22. Despite notice, Frank can still be charged.

Moreover, if what is charged is Estafa, Frank, being a brother of the offended party, cannot be held criminally liable under Article 332, RPC.

BP 22 (2010)

No. VIII. A asked financial support from her showbiz friend B who accommodated her by issuing in her favor a postdated check in the sum of P90,000.00. Both of them knew that the check would not be honored because B's account had just been closed.

The two then approached trader C whom they asked to change the check with cash, even agreeing that the exchange be discounted at P85,000.00 with the assurance that the check shall be funded upon maturity. Upon C's presentment of the check for payment on due date, it was dishonored because the account had already been closed.

What action/s may C commence against A and B to hold them to account for the loss of her P85,000.00? Explain. (5%)

SUGGESTED ANSWER:

A criminal action for violation of BP 22 may be filed against B who drew the postdated check against a closed bank account, for value paid by C, and with knowledge at the time he issued the check that the account thereof is already closed.

A cannot be held liable under BP 22 because he was a mere endorser of B's check to C who exchanged the check in cash. BP 22 does not apply to endorser of checks. Hence only a civil action may be filed by C against A to recover the P85,000.00.

Although a simultaneous action for estafa is authorized by law for the issuance of a worthless check, under the given facts, the check was discounted and thus issued in a credit transaction



for a pre-existing indebtedness. Criminal liability for estafa does not arise when a check has been issued in payment for a pre-existing debt.

Estafa; Abuse of Confidence (2007)

No. VIII. 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. (10%)

SUGGESTED ANSWER:

If the "talaan" or ledger which Fe made to show a falsehood was a private document, the only crime that Fe committed was estafa thru abuse of confidence or unfaithfulness. Criminal liability for falsification of a private document does not arise without damage or at least proof of intent to cause damage. It cannot co-exist with the crime of estafa which is also essentially requires damage or at least proof of intent to cause damage. Since the "talaan" was falsified to cover-up or conceal the misappropriation of the amount involved, whatever damage or

intent to cause damage attends the falsification, it will be the same damage or intent to cause damage that will attend the estafa.

If such "talaan" or ledger was a commercial document, damage or proof of intent to cause damage is not necessary. The falsification alone if done with intent to pervert the truth, would bring about criminal liability for falsification of a commercial document. Damage or intent to cause damage, would sustain the estafa independently of the falsification of the commercial document. 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 but rather resorted to, to conceal or hide the misappropriation of the amount she pocketed.

ALTERNATIVE ANSWER:

The crimes committed by Fe are theft and falsification of private document because Fe's possession of the proceeds of the rice mill was only physical, not juridical possession, and having committed the crimes with grave abuse of confidence, it is qualified theft.



The falsification is a separate crime from the theft because it was not committed as a necessary means to commit the theft but resorted to only to hide or conceal the unlawful taking.

Estafa and B.P. 22 (2009)

No. XIII. b. 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. (4%)

SUGGESTED ANSWER:

No, his contention is not tenable. He committed as many count of estafa against the 500 victims and 2000 count

of violation of BP 22, since each swindling is achieved through distinct fraudulent machinations contrived at different time or dates, and in different amounts. Moreover, his drawing of separate checks payable to each payee is a separate criminal resolution, as they must be of different amounts and of different dates. He acted with separate fraudulent intent against each swindling and issuing each check. It cannot be maintained that hi acts are the product of one criminal resolution only.

ALTERNATIVE ANSWER:

Yes, Angelo committed only one count of estafa and one count of violation of BP 22 because his acts were propelled by one and the same intent to defraud (Santiago v. Garchitorena, 228 SCRA 214[1993]).

Estafa; Falsely Pretending to Possess Power (2008)

No. IX. a. 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. (4%)

SUGGESTED ANSWER:

Yes, Gabriel committed the crime of Estafa under Art. 315, Par. 2(a), RPC by fraudulent acts executed prior to or simultaneous with the fraud or falsely pretending to possess agency. Myla paid the money because she relied upon the demand letter prepared by Gabriel with the false allegation that he was authorized to collect rentals.

Estafa through Falsification (2013)

No. VIII. 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? (7%)

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, which is a public document, as a necessary means to sell her properties to third parties without delivering the proceeds thereof. Although the relationship of affinity created between William and his mother-in-law survived the death of either party to the marriage, the coverage of the absolutory cause under Article 332 (1) of the Revised Penal Code cannot be applied to him. It is strictly limited to the simple crimes of theft, estafa and malicious mischief. It does not apply where any of the crimes mentioned is complex with another crime. This is because when estafa is committed through falsification of a public document, the matter acquires a very serious public dimension and goes beyond the respective rights and liabilities of family member among themselves. Effectively, when the offender resorts to an act that breaches the public interest in the integrity of public documents as a mean to violate the property rights of a family member,



he is removed from the protective mantle of the absolutory cause under Article 332 (Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People, GR No. 181409, February 11, 2010).

Highway Robbery (2012)

No. IV. b. 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? (5%)

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. If the purpose is only a particular robbery, the crime is only robbery, or robbery in a band if there are at least four armed participants (See: People v. Mendoza, G.R. No. 104461, February 23, 1996).

Persons Exempt from Criminal Liability (2008)

No. IX. b. 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. (3%)

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) (Luis B. Reyes, *The Revised Penal Code*, Volume II, page 853, 16th Edition [2006]).

Robbery; By a Band (2010)

No. XXIII. a. 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. (2%)

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)**

Robbery in an Inhabited House (2008)

No. XIII. 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. (7%)

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.

ALTERNATIVE ANSWER:

Lucas and Pedro may also be charged with qualified theft because Lucas abused the trust and confidence of Nestor and Julia, which gave his access to the house.

Robbery w/ Homicide (2010)

No. XXIII. b. 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. (2%)

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, the same would only be taken as generic aggravating circumstance as provided by the Rep. Act No. 8294 (People v. Bolinguet, G.R. Nos. 137949-52, December 11, 2003).

Robbery w/ Homicide (2009)

No. I. d. 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.

SUGGESTED ANSWER:

False, only one crime of robbery with homicide is constituted because 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; People v. Mabasa, 65 Phil. 568 [1938]).



Robbery w/ Homicide (2009)

No. VIII. 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.

(b) Suppose it was Alfredo who was killed by the responding policemen, what charges can be filed against Braulio, Ciriaco and Domingo? Explain. (2%)

SUGGESTED ANSWER:

The crime of which Braulio, Ciriaco and Domingo can be charge is Robbery with Homicide (Art. 249[1], RPC) because 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.

(c) 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. (2%)

SUGGESTED ANSWER:

Braulio shall be liable for Robbery with Homicide (Art. 294[1], RPC) for killing Alfredo, since the killing was by reason of the robbery. Ciriaco and Domingo having conspire only in the commission of the robbery, should only incur liability for the crime conspired upon – the robbery, unless they were with Braulio during the killing and could have prevented the same but they did not, in which case they shall be also be liable for Robbery with Homicide.

It is of no moment that the person killed is one of the robbers and he was killed during the robbery (People v. Barot, 89 SCRA 16 [1979]).

Robbery w/ Homicide (2007)

No. III. 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. (10%)

SUGGESTED ANSWER:

Jervis and Marlon committed the crime of robbery, while Jonathan committed the special complex crime of robbery with homicide.

Jervis and Marlon are criminally liable for the robbery only, because that was the crime conspired upon and actually committed by them, assuming that the customers was affected with intimidation. They will not incur liability for the death of the pedestrian because they have nothing to do with it. Only Jonathan will incur liability for the death of the pedestrian, aside from the robbery, because he alone brought about such death. Although the death caused was not intentional but accidental, it shall be a component of the special complex crime of robbery with homicide because it was committed in the course of the commission of the robbery.

ALTERNATIVE 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' felonious act and on the occasion of the commission of the robbery People vs. Guiapar, 129 SCRA 539 [1984]].

Robbery w/ Homicide; Complex Crime (2009)

No. VIII. a. While Alfredo, Braulio, Ciriaco, and Domingo were robbing a bank, policemen arrived. A firefright 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. (3%)

SUGGESTED ANSWER:

The crime committed are 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, RPC; People v. Gayrama, 60 Phil. 796 [1934]).

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 of the offender's firing guns at the responding policemen who are agents of person in authority performing their duty when fired at to frustrate such performance (People v. Ladjaalam, G.R. No. 136149-51, Sept. 19, 2000).

Theft (2012)

No. III. a. 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. (5%)

SUGGESTED ANSWER:

No, 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. Thus, theft cannot have a frustrated stage. Theft can

only be attempted or consummated (Valenzuela v. People, G.R. No. 160188, June 21, 2007, En Banc).

ALTERNATIVE ANSWER:

Parsing through the statutory definition of theft under Article 308, it is clear that theft is already "produced" upon the "taking of personal property of another without the latter's consent."

Each felony under the RPC has a "subjective phase," or that portion of the act constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which, with prior acts, should result in the consummated crime. After that point has been breached, the subjective phase ends and the objective phase begins. It has been held that if the offender never passes the subjective phase of the offense, the crime is merely attempted. On the other hand, the subjective phase is completely passed in case of frustrated crimes, for in such instances, "subjectively the crime is complete."

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 (2010)

No. XVIII. a. 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 Eva Marie incur criminal liability in bringing the puppy home as a pet? Explain. (2%)

SUGGESTED ANSWER:

Yes, Eva Marie incurred criminal liability for the crime of simple theft. The puppy is personal property which is susceptible of taking and has pecuniary value. Obviously, she took it with intent to own it; hence, with intent to gain.

Theft (2008)

No. V. a. 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. (3%)

SUGGESTED ANSWER:

Eman is guilty of theft (Art. 308, RPC) for failure to return the lost property to the rightful owner. His intent to gain became apparent when he proposed to pawn the ring and to share the proceeds with PO1 Melvin.

ALTERNATIVE ANSWER:

Eman has no criminal liability. The fact alone that he suggested to PO1 Melvin such an improper proposal does not make Eman criminally liable. It is noted that there was no overt act on the part of Eman. Hence, a criminal thought or mere intention, no matter how immoral or improper it may be, will never constitute a felony. (Luis B. Reyes, The Revised Penal Code, Volume 1, page 32, 16th Edition [2006]).



Theft; Qualified Theft (2010)

No. XIV. 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. (3%)

SUGGESTED ANSWER:

Joan may be charged for qualified theft because she took away personal property belonging to Paul without the latter's consent, so obviously with intent to gain, and with grave abuse of confidence.

But Joan may invoke as a defense Art. 332 of the Revised Penal Code, under which no criminal liability but only civil liability shall result for the crime of theft, swindling or malicious mischief committed by "spouses", among other.

The reference to "theft" under the Article embraces both simple theft and qualified theft, and the reference to "spouses" include common-law or "live-in" relationship (People v. Constantino, 60 O.G. 3603 [1963]).

CRIMES AGAINST CHASTITY**Concubinage (2010)**

No. XV. 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. (3%)

SUGGESTED ANSWER:

No, a case for concubinage will not prosper because said crime may be committed only by a husband in three (3) ways, viz:

- 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).**

The facts of the case given do not constitute any of the situations above-stated.



Qualified Seduction; Classes of Offenders (2007)

No. V. What are the three (3) classes of offender in the crime of qualified seduction? Give an example of each.

SUGGESTED ANSWER:

The three (3) classes of offenders in the crime of qualified seduction are:

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.

ALTERNATIVE ANSWER:

The three (3) classes of offenders in the crime of qualified seduction are:

1. Those who abuse their authority.
Examples: person in public authority, guardian, teacher or a person who, in any capacity, is entrusted with the education or custody of the woman seduced.
2. Those who abuse the confidence reposed on them. Examples: priest, house servant, domestics.

Those who abuse their relationship.
Examples: a brother who seduced his sister; ascendant who seduced his descendant. Art. 337, Revised Penal Code).

CRIMES AGAINST THE CIVIL STATUS OF PERSONS

Bigamy; Elements (2012)

No. I. a. What are the elements of the crime of bigamy? (5%)

SUGGESTED ANSWER:

The elements of bigamy are: (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) he contracts a subsequent marriage; and (4) the subsequent marriage would have been valid had it not been for the



existence of the first (*Marbell-Bobis v. Bobis*, G.R. No. 138509, July 31, 2000).

ALTERNATIVE ANSWER:

There are three (3) elements of bigamy: (1) an undissolved marriage; (2) a new marriage; and (3) fraudulent intention constituting the felony. This last element is not stated in Article 349 of the Revised Penal Code, because it is undoubtedly incorporated in the principle antedating all codes, and, constituting one of the landmarks of our Penal Code, that, where there is no willfulness there is no crime (*People v. Manuel*, G.R. No. 165842, November 29, 2005).

Bigamy; First Marriage Null and Void (2012)

No. I. b. 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. (2%)

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 (*People v. Manuel*, supra).

ALTERNATIVE ANSWER:

I will render a judgment of acquittal. According to Justice Florenz Regalado, in bigamy, it is essential that the first marriage is valid and subsisting (*People v. Dumpo*, 62 Phil. 246). If the first marriage was null and void, there would be no bigamy (*People v. Mendoza*, 9 Phil. 845). Under the principle of retroactivity of a marriage being declared void ab initio, the accused is deemed never to have been married. Since bigamy requires that the accused must have been legally married, he cannot be convicted of the crime of bigamy (*Morigo v. People*, G.R. No. 145226, February 06, 2004).

Bigamy; Psychological Incapacity (2012)

No. I. c. 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. (3%)

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 of absolutely no moment 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. Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity insofar as the vinculum between the spouses is concerned, it is significant to note that the said marriage is not without legal effects. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriage, while beguiling throngs of hapless women with the promise of futurity and commitment (Tenebero v. The Honorable Court of

Appeals, G.R. No. 150758, February 18, 2004).

Bigamy; Perjury; Adultery (2008)

No. XII. 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 licensed 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. (7%)

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.

CRIMES AGAINST HONOR

Libel; Defamatory Utterances against Public Figure (2013)

No. IV. In her weekly gossip column in a tabloid, Gigi wrote an unflattering article about Pablo, a famous singer, and his bitter separation from his wife. The article portrayed Pablo as an abusive husband and caused him to lose lucrative endorsement contracts. Pablo charged Gigi with libel. In her defense, Gigi countered that she did not commit libel because Pablo has attained the status of a public figure so that even his personal life has become a legitimate subject of public interest and comment.

Is Gigi correct? (7%)

SUGGESTED ANSWER:

No, Gigi is nor correct. Although wider latitude is given to defamatory utterances against public figures in relation to matters of public interest involving them, such defamatory utterances fo not automatically fall within the ambit of constitutionally protected speech. If the utterances are false, malicious or unrelated to a public figure's work, the same may give rise to

criminal liblity (Fermin v. People, GR No. 157643, March 28, 2008).

Any attack upon the private character of the public figure on matters which are not related to their works may constitute liber under Article 355 (Sazon v. Hon. Court of Appeals, GR No. 120715, March 29, 1996). Here, Gigi was attacking the personal life of Pablo as a husband and not his public life as a famous singer.

ALTERNATIVE ANSWER:

Gigi is correct. Pablo, a famous singer, attained the status of a public figure o that even his personal life that has something to do with hi character and integrity became legitimate public interest. Here, Pablo was portrayed as an abusive husband and caused him to lose a lucrative endorsement contracts. The article impinge on the moral fiber and qualification of Pablo as a famous singer entitled to respect as a public figure. Subject only to the requisite that the author has knowledge of it falsity or with reckless disregard of the truth , the article, thus, constituted a qualified privileged communicated protected by the freedom of expression. Gigi cannot be convicted absent proof of actual malice.



Libel; Proof of Truth (2009)

No. I d. In the crime of libel, truth is an absolute defense.

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.

Libel; Unfair Competition (2010)

No. XI. 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? (4%)

SUGGESTED ANSWER:

I will advise Anglina to file a criminal case of libel against Bettina because the

imputations made by Bettina is libelous. Whether the imputation of a defect, status or condition is real or imaginary, if it publicly tend to discredit, dishonor or place in contempt or ridicule a particular person who is identified, the imputation I presumed by law to be malicious and thus penalized as libel under Art. 355 of the Revised Penal Code.

Moreover, if Bettina is engaged in similar line of trade, her statement against the goods sold by Angelina may constitute a violation of the law on Unfair Competition (Rep. Act No. 8291).

QUASI-OFFENSES**Criminal Negligence; Reckless Imprudence Resulting in Homicide (2008)**

No. III. 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. (6%)



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 his death (Art. 365, RPC).

MISCELLANEOUS

Chain of Custody (2009)

No. XIV. 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? (3%)

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.



Doctrine of Pro Reo (2012)

No. VI. a. What is the fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law? (5%)

SUGGESTED ANSWER:

The fundamental principle in interpreting and applying penal laws is the principle of *pro reo*. The phrase “in dubio pro reo” means “when in doubt, for the accused.” (Intestate estate of Gonzales v. People, G.R. No. 173473, December 17, 2008).

Doctrine of Pro Reo (2010)

No. XII. b. What is the doctrine of *pro reo*? How does it relate to Article 48 of the Revised Penal Code? (3%)

SUGGESTED ANSWER:

The doctrine of *pro reo* advocates that penal laws and laws penal in nature are to be construed and applied in a way lenient or liberal to the offender, constant to and 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 (i.e., that prescribed for the most serious crime and to be imposed in its maximum period). The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity that when the crimes are committed by different acts and several criminal resolutions. (People vs Comadre, 431 SCRA 366, 384 [2004]). 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.

Human Rights Violations (2008)

No. I. b. Are human rights violations considered as crimes in the Philippines? Explain. (3%)

SUGGESTED ANSWER:

Yes, strictly speaking human rights violations cannot be considered crimes in the Philippines. However, if the acts constitute violation of customary international law, they may be considered violations of Philippine law (See Sec. 8, Art. II, Constitution). Also, the acts may constitute elements of



offenses penalized under Philippine laws, like kidnapping/illegal detention – serious or slight violation of R.A. 7610, or R.A. 7877 – the Anti-sexual Harassment Act.

Intervention vs. Diversion (2009)

No. XV. a. 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. (3%)

SUGGESTED ANSWER:

The two terms are different.

“Intervention” refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological,

emotional and psycho-social well-being. This is available to a child 15 years old or less at the time of the commission or although over 15 but below 18 years old at the time of commission of the crime, the child acted without discernment.

“Diversion” refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings. This process governs when the child is over 15 years old 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.

No Criminal Liability (2008)

No. II. a. 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 oncoming tricycle, killing the tricycle driver.

What is the criminal liability of Carlos, if any? Explain. (4%)

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.

ALTERNATIVE ANSWER:

Carlos is liable for the natural and logical consequence of his acts, although the injury that results is different from that which he intended (Praeter Intentionem). He incurs criminal liability for reckless imprudence resulting in homicide under Art. 365 of the Revised Penal Code for the death of the tricycle driver. He took the law into his own hands, open fired at the wheel of his vehicle to stop it from being stolen, but instead caused the death of the tricycle driver, because of the inexcusable lack of precaution.

Three-Fold Rule (2013)

No. IX. 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? (7%)

SUGGESTED ANSWER:

No. the three-fold rule is applicable only in connection with the service of the sentence not in the imposition of the proper penalties. The court must impose all penalties for all the crimes for which the accused have been found guilty.



Thus, the court should not make a computation in its decision and sentence the accused to not more than the three-fold of the most severe of the penalties imposed. The computation under the three-fold rule is for the prison authorities to make.

SPECIAL PENAL LAWS

Anti-Carnapping Act (2008)

No. II. b. 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 oncoming tricycle, killing the tricycle driver.

What is the criminal liability of Paolo, if any? Explain. (4%)

SUGGESTED ANSWER:

Paolo who acted with intent to gain, unlawfully took the personal property of another with force upon things, is liable for carnapping under R.A. 6539, as amended by R.A. 7659, not qualified theft (Peo vs. Bustinna).

Anti-Carnapping Act (2012)

No. IV. a. 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. (5%)

SUGGESTED ANSWER:

No, I would not charge the 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 who happened to take a fancy thereto, 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, the crime committed is violation of the Anti-Carnapping Act. of



1972 (People v. Puno, G.R. No. 97471, February 17, 1993). Moreover, there is no showing that the 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. What was shown is one isolated hijacking of a postal van. It was not stated in the facts given that the 10 men previously attempted at similar robberies by them to establish the “indiscriminate” commission thereof (Filoteo, Jr. v. Sandiganbayan, G.R. No. 79543, October 16, 1996).

ALTERNATIVE ANSWER:

As a public prosecutor, I would charge the 10 men who hijacked the postal van with violation of PD 532. As oppose to brigandage under Article 306 of the RPC, highway robbery under PD 532 does not require that there be at least four armed persons forming a band of robbers. In this case, while there are ten (10) men who hijacked the postal van, only two (2) were armed. Hence, they may be charged with highway robbery under PD 532.

Anti-Graft & Corrupt Practices – RA 3019 (2010)

No. IX. 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. (5%)

SUGGESTED ANSWER:

Yes, Proserfina committed 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.”

Being the assistant public high school principal, it is her duty to intervene in the release of salary differentials and per diem of classroom teachers under her. Her act of doing so, made with a request for a share or benefit therefor constitutes graft or corrupt practices under Sec. 3(b) of Rep. Act No. 3019.



Considering that the acts prohibited or punished under this law are mala prohibita, and thus punishable thereunder, whether done with criminal intent or not.

ALTERNATIVE ANSWER:

In the case of Jaravata vs Sandiganbayan (G.R. No. 56170, January 31, 1984), which has identical set of facts as the present case, the Supreme Court ruled that there is no law which invests an assistant principal with the power to intervene in the payment of the salary differentials of classroom teachers or anyone for that matter.” Accordingly, since in his official capacity as in the payment of the salary differentials, the assistant principal cannot be said to have violated Sec. 3(b) of Rep. Act No 3019 although he exerted efforts to facilitate the payment of the salary differentials.

Anti-Graft & Corrupt Practices – RA 3019; Indirect Bribery (2009)

No. VII. 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. (3%)

SUGGESTED ANSWER:

No, Charina is not correct. Although the charged for violation of Rep. Act. No. 3019 and the charge for Indirect Bribery (Art. 211, RPC) arose from the same act, the elements of the violation charged under Rep. Act. No. 3019 are not the same as the felony charged for Indirect Bribery under the Rev. penal Code (Mejia v. Pamaran, 160 SCRA 457 [1988]). Hence, the crime charged are separate



and distinct from each other, with different penalties. 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.

Dangerous Drugs Act (2007)

No. II. 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. (10%)

SUGGESTED ANSWER:

Anastacio may not be charged of any crime.

Sec. 7 of Rep. Act 9155 on the Comprehensive Dangerous Drugs of 2002 punishes employees and visitors of a den, dive or resort where dangerous drugs are used in any form. But for a visitor of such place to commit the crime, it is a requisite that he "is aware of the nature of the place as such and

shall knowingly visit the same." These requisites are absent in the facts given.

Harboring or Assisting in the Escape of a Person who has Committed a Crime – PD 1829 (2008)

No. IV. b. 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. (3%)

SUGGESTED ANSWER:

Yes, for violation of (1) 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) under Art. 19(3), RPC, the Mayor, being a public officer and acting with abuse of his public function, is an accessory to the crime of murder by assisting in the escape of Domeng.



Illegal Possession of Drugs; Mala Prohibita (2009)

No. XII. 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? (3%)

SUGGESTED ANSWER:

No, my answer will not be the same because violations of Rep. Act 9165 are *mala prohibita* in which mitigating and aggravating circumstances are not appreciated. Although in *People v. Simon* (234 SCRA 555[1994]), it was held that Art. 64 can be applied if the special law adopted the nomenclature of penalties provided under the RPC, such pronouncement cannot be applied in the instant case because the for illegal possession of drugs under R.A. 9165 do not follow the technical nomenclature of penalties in the RPC and thus, cannot be divided into periods. Hence, the existence of mitigating and aggravating circumstances cannot be appreciated.

R.A. 9160; Anti-Money laundering Act (2009)

No. XI. e. For a person who transacts an instrument representing the proceeds of a covered unlawful activity to be liable under the Anti-Money Laundering Act (R.A. 9160, as amended), it must be shown that he has knowledge of the identities of the culprits involved in the commission of the predicate crimes.

SUGGESTED ANSWER:

False, there is nothing in the law which requires that the accused must know the identities of the culprits involved in the commission of the predicate crimes. To establish liability under R.A. 9160, it is sufficient that proceeds of an unlawful activity are transacted, making them appear to have originated from legitimate sources.

R.A. 9160; Anti-Money Laundering Act; Freeze Order (2010)

No. VI. There being probable cause to believe that certain deposits and investments in a bank are related to an unlawful activity of smuggling by Alessandro as defined under Republic Act (RA) No. 9160, as amended (Anti-Money Laundering Act) an application for an order



to allow inquiry into his deposit was filed with the Regional Trial Court.

After hearing the application, the court granted the application and issued a freeze order.

Pass upon the correctness of the court's order. Explain. (3%)

SUGGESTED ANSWER:

The freeze order issued by the Regional Trial Court is not correct, because jurisdiction to issue said freeze order is now vested with the Court of Appeals under Rep. Act 9194, amending the Anti-Money Laundering Act (Rep. Act No. 9160). The Regional Trial Court is without jurisdiction to issue a freeze order of the money involved.

R.A. 9160; Anti-Money Laundering Act; Stages (2010)

No. XII. a. Define Money Laundering. What are the three (3) stages in money laundering? (3%)

SUGGESTED ANSWER:

Money Laundering is “the process of which a person conceals the existence of unlawfully obtained money and makes it appear to have originated from lawful sources. The intention behind such a

transaction is to hide the beneficial owner of said funds and allows criminal organizations or criminals to enjoy the proceeds of such criminal activities.”

The three (3) stages in money laundering are:

- a) Placement/infusion or the physical disposal of the criminal proceeds;**
- b) Layering or the separation of the criminal proceeds from their source by creating layers of financial transactions to disguise such proceeds as legitimate and avoid the audit trail; and**
- c) Integration or the provision of apparent legitimacy to the criminal proceeds.**

R.A. 9262; Violence Against Women and Children Act; Battered Woman Syndrome (2010)

No. XIX. a. 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."

Define "Battered Woman Syndrome." (2%)

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), Rep. Act No 9262).

R.A. 9262; Violence Against Women and Children Act; Battered Woman Syndrome; Phases (2010)

No. XIX. b. 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."

What are the three phases of the "Battered Woman Syndrome"? (3 %)

SUGGESTED ANSWER:

The three (3) phases of the “Battered Woman Syndrome” are: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving, or non-violent phase (People v. Genosa, G.R. No. 135981, January 15, 2004).

Syndicated Estafa (2010)

No. XVI. 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. (5%)

SUGGESTED ANSWER:

No, a case for syndicated estafa will not prosper because a syndicate for such crime under Pres. Decree 1689 must be comprised of five (5) or more persons committing the estafa or other forms of swindling defined in Arts. 315 and 316 of the Revised Penal Code; whereas the case given involved only three (3) accused who are alleged to have conspired in the commission of the swindling. But because the amount defrauded exceeds P100,000.00, the case is still under the same P.D. 1689 with a lower penalty than syndicated estafa.

Torture (2012)

No. X. b. AA was arrested for committing a bailable offense and detained in solitary confinement. He was able to post bail after two (2) weeks of defection. During the



period of detention, he was not given any food. Such deprivation caused him physically discomfort. What crime, if any, was committed in connection with the solitary confinement and food deprivation of AA? Explain your answer. (5%)

SUGGESTED ANSWER:

“Torture” refers to an act by which sever pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority (Section 3 of R.A. No. 9754). Food deprivation and confinement in solitary cell are considered as physical torture under Section 4 (2) R.A. No. 9745. Hence, the crime committed is torture.

ALTERNATIVE ANSWER:

In addition to torture, the crime of maltreatment of prisoner is committed.

**MULTIPLE CHOICE
QUESTIONS**

**(MCQ) 2013 Criminal Law
Exam MCQ (October 20,
2013)**

I. The acquittal of an accused shall bar the civil action arising from the crime where the judgment of acquittal holds that _____. (0.5%)

(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). The accused did not commit the act imputed to him.

Acquittal in a criminal action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the criminal



action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the criminal acts imputed to them (Tan v. Standard Vacuum Oil Co., 91 Phil. 672).

II. Subsidiary liability may be imposed on the following, except _____. (0.5%)

(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). Parents of minors who act with discernment in committing crimes.

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 Revised Penal Code.

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

III. Passion or obfuscation may be appreciated _____. (0.5%)

(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). If it arises from jealousy of a man who has been living-in with the woman for the past 20 years.

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.

IV. Who among the following accused is entitled to a privileged mitigating circumstance that would lower the imposable penalty by one degree? (0.5%)

(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) All of the above.

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.

V. 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? (0.5%)

(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:

"Never Let The Odds Keep You From Pursuing What You Know In Your Heart You Were Meant To Do."-Leroy Satchel Paige



(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.

VI. Choose the correct circumstance when a woman may be held liable for rape: (0.5%)

(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) When she befriends and puts a sleeping pill in the victim's drink to enable her husband to have intercourse with the victim.

A woman, who befriends and puts a sleeping pill in the victim's drink to enable her husband to have intercourse with the victim, may be held liable for rape as principal by indispensable cooperation and on the basis of collective responsibility by reason of conspiracy.

VII. The death of the accused extinguishes his criminal liability but civil liability is not extinguished. (0.5%)

(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) when the death of the accused occurred after final judgment

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).

VIII. Compelling the pilot of an aircraft of Philippine Registry to change its destination is _____. (0.5%)

(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) a violation of the Anti-Hijacking Law or R.A. No. 6235.

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).

IX. Choose from the list below the correct principle in considering "motive". (0.5%)

(A) If the evidence is merely circumstantial, proof of motive is essential.

(B) Generally, proof of motive is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing.

(C) Motive is important to ascertain the truth between two antagonistic theories.

(D) Motive is relevant if the identity of the accused is uncertain.

(E) All of the above are correct.

SUGGESTED ANSWER:

(C) Motive is important to ascertain the truth between two antagonistic theories. (Borguilla v. CA and People, G.R. No. L-47286, January 7, 1987).

X. 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? (0.5%)

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

When the principal imposed is higher than prision correccional, no subsidiary imprisonment shall be imposed upon the culprit (Article 39, Revised Penal Code).

XI. 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? (1%)

(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) Estafa.

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.”

XII. 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? (1%)



(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).

XIII. 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? (1%)

(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).

XIV. 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? (1%)

(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) Amelia did not commit any crime because the swimming pool is located in her private home.

Ameli did not commit the crime of alarms and scandals because she did not intend to disturb public peace as she was merely swimming within the confines of her private home. Neither did Amelia commit grave scandal because her conduct cannot be deemed highly scandalous as stated in Article 200 of the Revised Penal Code, nor did Amelia commit any of the acts mentioned in Article 201 to constitute an incedent live show to satisfy the market for lust or pornography.

XV. 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? (1%)

(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) Reckless imprudence resulting in homicide, serious physical injuries and damage to property (Article 365, Revised Penal Code and Ivler v. Modesto-San pedro, G.R. No. 172716, November 17, 2010).



XVI. 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? (1%)

- (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) Estafa and a violation of BP Blg. 22 (Article 315(2), Revised Penal Code).

XVII. 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? (1%)

(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) 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.

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). Although statements against the counsel for plaintiff are not, for being irrelevant and impertinent to the issue therein. Irrelevant and impertinent statements are not protected by the privileged-communication rule.

XVIII. 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 _____. (1%)

- (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) acts of lasciviousness (Article 336, Revised Penal Code).

XIX. 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? (1%)

- (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) Rape with homicide.

The crime committed is the special complex crime of rape with homicide since homicide was committed on the occasion or by reason of rape.

There is no criminal liability for theft, since, under Article 332 of the Revised Penal Code, no criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:



1. Spouses, ascendants and descendants, or relatives by affinity in the same line....xxx...

XX. From an extension line, Ricardo overheard a telephone conversation between Julito and Atty. Hipolito. The latter (Atty. Hipolito) was asking money from Julito in exchange for dropping the extortion charge filed against Julito. Ricardo was charged of violating the Anti-Wire Tapping Act or R.A. 4200.

Under these facts, was there a violation as charged? (1%)

(A) Yes, because the conversation was private in nature.

(B) Yes, because the conversation was overheard without the consent of the parties, Julito and Atty. Hipolito.

(C) No, because what is punishable is intentional listening to a conversation through a wire.

(D) No, because a telephone extension line is not the device or arrangement contemplated by the law and the use of an extension line cannot be considered as wire tapping.

(E) None of the above.

[Note: there are two choice marked as (D) in the original Supreme Court Bar Examination Questionnaire.]

SUGGESTED ANSWER:

(D) No, because a telephone extension line is not the device or arrangement contemplated by the law and the use of an extension line cannot be considered as wire tapping (Gaanan v. IAC, G.R. No. L-69809, October 16, 1986).

XXI. 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? (1%)

(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) Knowingly rendering an unjust interlocutory order.

The facts show that all the elements of the crime of knowingly rendering an unjust interlocutory order are present, to wit: (1) that the offender is a judge; (2) that he performs any of the following acts: (a) he knowingly renders an unjust interlocutory order or decree; or (b) he renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance (Article 206, Revised Penal Code). The requirement of a notice and hearing is a basic tenet.

XXII. 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)? (1%)

- (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) Possession of dangerous drugs.

Even though George was found positive for opium, he shall not be held additionally liable for use of dangerous drugs under Section 15 of RA 9165. The last paragraph of this provision provides: "this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drugs provided for under Section 11 of this Act, in which case the provisions stated therein shall apply." RA 9165, a possessor and user of dangerous drug can only be held liable for illegal possession of dangerous drug under Section 11.

Importation of drugs is also not committed. In order to establish the crime of importation of dangerous drugs, it must be shown that the dangerous drugs are brought to the Philippines from a foreign country. In this case, it was not stated whether the arrival lounge is in the domestic or international terminal of NAIA and whether or not George is an airplane passenger, who just arrived from a foreign country. Thus, the crime committed is possession of dangerous drugs.



XXIII. 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? (1%)

(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) Coup d'etat.

It appears that General Tejero and his men launched a swift attack accompanied by violence, intimidation or threat directed against public utilities or other facilities needed for the exercise and continued possession of power for the purpose of seizing state power (Article 134-A, Revised Penal Code).

XXIV. Andres was convicted of frustrated homicide and was sentenced to 6 years and 1 day as minimum, to 8 years of prison 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 4 years of prison 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? (1%)

(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) Yes, because after his appeal, he qualified for probation as the sentence imposed on him was less than 6 years.

The accused who was 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 since: (1) the Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying theory behind probation is one of liberality towards the accused. (2) If the accused will not be allowed to apply for probation, he will be made to pay for the trial court's erroneous judgment. (3) While probation may be a mere privilege, the accused has the right to apply for that privilege. (4) two judgments of conviction have been meted out to the accused: one, a conviction for frustrated homicide by the RTC now set aside; and two, a conviction for attempted homicide by the Supreme Court (Colinares v. People, G.R. No. 182748, December 13, 2011).

XXV. Juancho owns a small piggery in Malolos, Bulacan. One Saturday afternoon, he discovered that all his pigs had died. Suspecting that one of his neighbours had poisoned the pigs, Juancho went home,

took his rifle, went around the neighbourhood, and fired his rifle in the air while shouting, "makakatikim sa akin ang naglason 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? (1%)

(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:

(D) No, because the crime of alarms and scandals affects public order.

Under Section 9 of PD No. 968, the benefit of probation shall not be extended to those convicted of a crime



against public order. Alarms and scandals is a crime against public order since it is punishable under Chapter 5, Title Three, Book two of the Revised Penal Code; hence, Juancho is not qualified for probation.

2012 Criminal Law Exam MCQ (October 21, 2012)

1. 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 absolatory cause of relationship by affinity. Which statement is most accurate?
 - 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 absolatory cause of relationship by affinity is therefore no longer available to AAA.
 - b. The death of spouse does not severe the relationship by affinity which is an absolatory 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 absolatory 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 absolatory cause of relationship by affinity is not available to AAA.**

SUGGESTED ANSWER:

D. there are two views on whether the extinguishment of marriage by death of the spouse dissolves the relationship by affinity for purpose of absolute cause. The first holds that relationship by



affinity terminates with the dissolution of the marriage while the second maintains that relationship continues even after the death of the deceased spouse. The principal of pro reo calls for the adoption of the continuing affinity view because it is more favorable to the accused. However, the absolatory cause applies to theft, swindling and malicious mischief. It does not apply to theft through falsification or estafa through falsification (Intestate estate of Gonzales v. People, G.R. No. 181409, February 11, 2010).

2. Under which of the following circumstances is an accused not liable for the result not intended?
 - 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. the Supreme Court in several cases 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, mistake of fact principle can likewise be applied in relation to circumstance of lack of voluntariness such as the circumstance of irresistible force or uncontrollable fear. In sum, the accused will not be held criminally liable for the result not intended when there is mistake of fact constituting an involuntary act.

ALTERNATIVE ANSWER:

C. Accused is not criminally liable for the result not intended when the wrongful act is not the proximate cause of the resulting injury.

3. Can there be a frustrated impossible crime?



- 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.

ALTERNATIVE ANSWER:

B. if one performed all the acts of execution but the felony was not produced, the crime committed is either frustrated felony or impossible crime and not frustrated impossible crime. If the felony despite the performance of all acts of execution was not produced due

to the employment of inadequate or ineffectual means to accomplish it, the crime committed is impossible crime. (Example: If the accused with intent to kill thought that the salt, which he mixed with the coffee of another, is arsenic powder, he is liable for impossible crime – People v. Balmores, G.R. No. L-1896, February 16, 1950, En Banc). If the means employed to accomplish the felony is adequate or effectual, but the felony was not produced by reason of causes independent of the will of the perpetrator, the crime committed is frustrated felony. (Example: The offender with intent to kill mixed arsenic with the coffee of another; the latter did not die not by reason of inadequate quantity of the poison but due to timely medical intervention; offender is liable for frustrated murder). Hence, the answer is “B”.

4. 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?



- 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 (People v, Del Castillo, G.R. No. 169084, January 18, 2012). If the victim is completely defenseless, treachery should be appreciated. When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter (People

v. Rebucan, G.R. No. 182551, July 27, 2011). What should qualify the crime is treachery as proved and not abuse of superior strength (People v. Loreto, G.R. No. 137411-13, February 28, 2003, See also People v. Perez, G.R. No. 181409, February 11, 2010).

5. Which of the following circumstances may be taken into account for the purpose of increasing the penalty to be imposed upon the convict?
 - a. Aggravating . circumstances which in themselves constitute a crime specially 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 circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of



increasing the penalty. The same rule shall apply with respect to such a degree that it must be necessary accompany the commission thereof. 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 (Article 62 of the Revised Penal Code). Hence, aggravating circumstance involving moral attributes should be taken into consideration in increasing the penalty to be imposed upon the convict.

6. Who among the following convicts are not entitled to the benefits of the Indeterminate Sentence Law?
- Those who are recidivists.
 - Those whose maximum term of imprisonment exceeds one (1) year.
 - Those convicted of inciting to sedition.
 - 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.

7. 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?
- Proposal to commit coup d'etat.
 - Proposal to commit sedition.**
 - Proposal to commit rebellion.
 - 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.

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?
- 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. The reason for the rule is that the crime of illegal recruitment is malum prohibitum where the criminal intent of the accused is not necessary for conviction, while the crime of estafa is malum in se where the criminal intent of the accused is necessary for conviction. In other words,

a person convicted under RA No. 8042 may also be convicted of offenses punishable by other laws (People v. Logan, G.R. No. 135030-33, July 20, 2001). 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 (People v. Turda, G.R. No. 97044, July 6, 1994). Moreover, 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.

[Note: RA No. 8042 amended pertinent provisions of the Labor Code and gave a new definition of the crime of illegal recruitment and provided for a higher penalty – Nasi-Villar v. People, G.R. No. 176169, November 14, 2008]



9. When are light felonies punishable?
- Light felonies are punishable in all stages of execution.
 - Light felonies are punishable only when consummated.
 - Light felonies are punishable only when consummated, with the exception of those committed against persons or property.**
 - 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 Revised Penal Code).

10. 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?
- AA is criminally liable for malfeasance in office.
 - AA is criminally liable for prolonging performance of duties and powers.**

- AA is criminally liable for disobeying request for disqualification.
- AA incurs no criminal liability because there is no indication that he caused prejudice to anyone.

SUGGESTED ANSWER:

B. the crime of prolonging performance of duties and powers is committed by any public officer who shall continue to exercise the duties and powers of his office, employment or commission, beyond the period provided by law, regulations or special provisions applicable to the case (Article 237 of the Revised Penal Code).

11. For treachery to qualify killing to murder, the evidence must show:
- 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.
 - 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. There is treachery when the offender commit any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make (Article 14 of the Revised Penal Code).

12. 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?

- 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.

Criminal liability shall be incurred by any person committing a felony (delito) although the wrongful act done be different from that which he intended (Article 4 of the Revised Penal Code). Attempt to commit suicide although an intentional act is not constitutive of a felony. According to Luis B. Reyes, "a person who attempts to commit suicide is not criminally liable, because the



society has always considered a person attempts to kill herself as an unfortunate being, a watched person more deserving of pity rather than of penalty.” Hence, the woman, who tried to commit suicide, is not liable for the direct, antural and logical consequence of her non-felonious act.

13. 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 pns10n correccional in its medium and maximum periods. What is the correct indeterminate penalty?

- a. **Twelve (12) years of prison mayor as minimum to twenty (20) years of reclusion tenlporal as maximum.**
- b. Ten (10) years of prison mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.
- c. Eight (8) years of prison mayor as minimum to eighteen (18) years and four (4) months of reclusion temporal as maximum.
- d. Twelve (12) years of prison 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 assault upon a person in authority 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.

14. A, 8, 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, 8 and C, as well as those who were carrying unlicensed firearms and those who were merely present at the meeting?

- a. Inciting to sedition for A, 8 and C and illegal possession of firearms for those carrying unlicensed firearms.
- b. Inciting to sedition for A, 8 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. inciting to sedition under Article 142 of the Revised Penal Code is not committed since there is no showing that the audience was incited by "A", "B" and "C" themselves to commit sedition. Neither is conspiracy to commit sedition under Article 142 committed since there is no showing that the organizers and audience agreed and decided to commit sedition. The crime committed is illegal assembly under Article 146 of the Revised Penal Code. This crime is committed by organizers and leaders of a meeting in which the audience was incited to the commission of the crime of sedition. Persons merely present at such meeting shall likewise be held criminally liable.

Those who were carrying unlicensed firearms, cannot be separately charged with the crime of illegal possession of unlicensed firearm in addition to illegal assembly. Settled is the rule that if the offender committed illegal possession of firearm and other crime, whether expressly mentioned in RA No. 8294 or

not, the offender cannot be prosecuted separately for illegal possession of firearm. RA 8294 prescribes a penalty for possession of unlicensed firearm "provided, that no other crime was committed." A simple reading of PD 1866 as amended by RA 8249 shows that if an unlicensed is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms (People v. Ladjaalam, G.R. Nos. 136149-51, September 19, 200; Celino v. CA, GR No. 170562, June 29, 2007).

15. 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?
- 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.
 - 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.**
 - 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. Stealing a worthless check constitute impossible crime. There is impossibility to accomplish the crime of theft since the check has no value (See: Jacinto v. People, G.R. No. 162540, July 13, 2009).

16. 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?

- 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. Quasi-recidivist is a person who shall commit a “felony” after having been convicted by final judgment while erving his sentence (Article 160 of the Revised Penal Code). “B” is not a quasi-recidivist since he did not commit a felony while serving sentence. Illegal possession of unlicensed firearm committed by “B” is an offense punishable by special law and not a felony under the Revised Penal Code.

ALTERNATIVE ANSWER:

A.”A” is a quai-recidivist. Under PD No. 1866, the penalty for illegal possession of firearm is prision correccional in its maximum period for low powered firearm or prision mayor in its minimum period for high powered firearm. Since these penalties under PD No. 1866 were taken from the Revised Penal Code, the rules in said Code for determining the proper period shall be applied by way of supplement (See: People v. Feloteo, G.R. No. 124212, June 5, 1998). One of these rules is the application of penalty in its maximum period due to the circumstance of quasi-recidivism. Although CA Justice Luis Reyes and Justice Florenz Regalado opined that the



second crime must be a felony to appreciate quasi-recidivism because Article 160 speaks of a “felony”, the Supreme Court in People v. Salazar, G.R. No. 98060 January 27, 1997 appreciated quasi-recidivism against the accused, who committed an offense under RA No. 6425. Hence, “A” is the answer.

17. 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?

- 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, to the prejudice of the offended party or to any third person (Article 315[1] [c] of the Revised Penal Code).

18. What crime is committed by a person who kills a three-day old baby?

- a. infanticide;
- b. homicide;
- c. **murder;**
- d. parricide.

SUGGESTED ANSWER:

C. the crime committed is not infanticide under Article 255 of the Revised Penal Code since the victim killed is not less than three days of age. Killing of a three-day old baby constitutes murder qualified by treachery under Article 248. Minor children, who by reason of their tender years, cannot be expected to put a defense. When an adult person illegally attacks a child, treachery exists. (People v. Fallorina, G.R. No. 137347, March 4, 2004).

19. What crime is committed by a person who kills his legitimate brother on the occasion of a public calamity?

- a. parricide;
- b. homicide;
- c. **murder;**
- d. death caused in a tumultuous affray.

SUGGESTED ANSWER:

C. Parricide under Article 246 of the Revised Penal Code 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, G.R. No. 188320, June 29, 2010). 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 murder.

20. 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?

- a. unlawful arrest;
- b. illegal detention;
- c. arbitrary detention;
- d. grave coercion.

SUGGESTED ANSWER:

A. in unlawful arrest, the private individual or public officer in its private capacity arrests or detains the victim without reasonable ground or legal authority. In arbitrary detention, the public officer, who has authority to make arrest, detains the victim without legal grounds for the purpose of: (1) delivering him to judicial authority (US v. Gellada, 15 Phil. 120); (2) conducting criminal investigation (People v. Oliva, 95 Phil. 962; US v. Agravante, GR No.

3947, January 28, 1908); or (3) determining if he committed or is committing a crime (US v. Hawchaw, GR No. L-6909, February 20, 1912).

Arbitrary detention is a crime against fundamental law of the law or the Constitution. A public officer, who is vested with the authority to detain or to order the detention of a person accused of a crime, is acting in behalf of the government in arresting or detaining a person. If such public officer detained a person in violation of his constitutional right against unreasonable seizure (or not in accordance with Section 5, Rule 113 of the Revised Rules of Criminal Procedure), the crime committed is "arbitrary detention." Unlawful arrest is a crime against personal liberty and security. A public officer, who is not vested with the authority to detain or to order the detention of a person (e.g. stenographer, researcher or municipal treasurer), is not acting in behalf of the government in making a warrantless arrest. Such public officer acting in his private capacity (or a private individual) could not violate the Constitution (People v. Marti, GR No. 81561, January 18, 1991); hence, if he arrests or detains a person not in accordance with Section 5, Rule 113 of the Revised Rule of Criminal Procedure, the crime committed is "unlawful arrest". The



essence of this crime is not violation of fundamental law of the law but deprivation of liberty of the victim.

In the facts given, the acts of the person squarely falls within the provision of Article 269 of the Revised Penal Code, which defines unlawful arrest as one committed by a person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.

21. 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?

- 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 a surrender to the proper authorities.

SUGGESTED ANSWER:

C. 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 the accused did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killings or in order to save the authorities the trouble and expense for his arrest, surrender is not a mitigating circumstance (People v. Del Castillo, G.R. No. 169084, January 18, 2012).

22. Who among the following is liable for estafa?

- 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:

B. the person, who ran away with a cellphone which was handed to him upon his pretence that he had to make an emergency call, is liable for estafa through misappropriation.

ALTERNATIVE ANSWER:

A. fraud or deceit may be committed by omission. It is true that mere silence is not in itself concealment. Concealment which the law denounces as fraudulent implies a purpose or design to hide fact which the other party sought to know. Failure to reveal a fact which the seller is, in good faith, bound to disclose may generally be classified as deceptive act due to its inherent capacity to deceive. Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation. A seller, who failed to disclose the defect of the property sold to the buyer, is liable for other deceit under Article 318 of the Revised Penal Code (Guinhawa v. People, GR No. 162822, August 25, 2005). Hence, "A" is the answer.

Misappropriation of personal property in possession of the accused may

constitute estafa of theft depending upon the nature of possession. If his possession of the property is physical or de facto, misappropriation thereof is constitutive of theft. If the possession is juridical or legal, misappropriation thereof is estafa through misappropriation (See: People v. Mirto, GR No. 193479, October 19, 2011). Thus, the person, who ran away with a cellphone which was handed to him upon his pretence that he had to make an emergency call, is liable for theft since the possession of offender is merely physical (See: US v. De Vera, 43 Phil. 1000). Hence, "B" is not the answer.

False pretense whether as an element of estafa through false representation under Article 315 of the Revised Penal Code and other deceit under Article 318 thereof must constitute the very cause or the only motive for the private complainant to part with her property (See: Guinhawa v. People, GR No. 162822, August 25, 2005). Assurance not only to pay the interest but more importantly the principal is obviously the very cause why the person in the given facts parted his money. Moreover, failure to pay interest as promised should not be considered as estafa or other deceit because of the constitutional prohibition against



imprisonment for non-payment of debt. Promise to pay is not a false pretense contemplated by provision of the law on estafa. Hence, “C” is not the answer.

The son, who induced his father to buy from him a land, which the son is no longer the owner, is not liable for estafa because relationship is an absolutory cause under Article 332 of the Revised Penal Code. Hence, “D” is not the answer.

23. What is the nature of the circumstance which is involved in the imposition of the maximum term of the indeterminate sentence?

- a. qualifying circumstance;
- b. aggravating circumstance;
- c. modifying circumstance;**
- d. analogous circumstance.

SUGGESTED ANSWER:

C. under the Indeterminate Sentence Law (ISL) the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rule of Revised Penal Code. The plain terms of the ISL show that the legislature did not intend to limit “attending circumstances” as referring to Article 13 and 14 of the RPC. If the legislature intended that the

“attending circumstances” under the ISL be limited to Articles 13 and 14, then it could have simply so stated. The wording of the law clearly permits other circumstances outside of Articles 13 and 14 of the RPC to be treated as “attending circumstances” under the ISL be limited to Articles 13 and 14 of the RPC to be treated as “attending circumstances” for purposes of the application of the ISL, such as quasi-recidivism and circumstance involving incremental penalty rule in estafa and theft (People v, Temporada, GR No. 173473, November 17, 2008, En Banc).

24. 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 8 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, 8 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?

- 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. a child above fifteen (15) years but below eighteen (18) years if age shall be exempt from criminal liability unless he/she has acted with discernment (Section 6 RA No. 9344). The discernment is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts, and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor (People v. Doquena, GR No. 46539, September 27, 1939). "A", "B" and "C" are not exempt from criminal liability since the manner they committed the crime indicates discernment.

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 (People vs. Ballo, GR No. 124871, May 13, 2004). 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 (People v. Sumalinog, GR No. 128387, February 5, 2004) unless it appears that they endeavored to prevent the homicide (People v. Gonzales, GR No. 140756, April 4, 2003). "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".

25. 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?

- 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 a public officer in charge with the conveyance or custody of the prisoner; either a detention prisoner or a 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 a mere detention prisoner (Curiano vs. CFI, G.R. No. L-8104, April 15, 1955). Hence, "d" is the answer. The escapee does not incur criminal liability.

26. 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?

- a. **anticipation of duties of a public office;**
- b. usurpation of authority;
- c. prohibited transaction;
- d. unlawful appointment.

SUGGESTED ANSWER:

A. The crime of anticipation of duties of a public office is committed by any person who shall assume the performance of the duties and powers of any public office or employment without first being sworn in or having given the bond required by law (Article 236 of the Revised Penal Code).



27. 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?

- 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. Abandonment of office or position is committed by any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service. The crime is qualified if the purpose of abandonment is to evade the discharge of the duties of preventing, prosecuting or punishing any of the crime falling within Title One, and Chapter One of Title Three of Book Two of the Revised Penal Code such as treason (Article 238). Hence, the crime committed is qualified abandonment of office.

28. 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?

- 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.



29. What is the minimum age of criminal responsibility?

- a. 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).

30. 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?

- 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). The means to commit trafficking in person such as taking advantage of the vulnerability of the victim, fraud etc. can be dispensed with since the trafficking is qualified when trafficked person is a child or when the adoption is effected through Inter-Country Adoption Act of and said adoption is for the purpose of prostitution (Section 6 [a] and [b]).

31. What crime is committed when a mother kills the three-day old child of her husband with their daughter?

- a. parricide;
- b. infanticide;
- c. **murder;**
- d. homicide.

SUGGESTED ANSWER:

C. The crime committed is not infanticide since the victim killed I 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 three-day old baby constitutes murder qualified by treachery.

32. When is a crime deemed to have been committed by a band?

- 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.

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

- 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).

34. 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?

- 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. the prostitute are not chattels but human beings protected by the constitutional guaranties such as the provision on liberty of abode. The mayor could not even for the most praiseworthy of motives render the liberty of the citizen so insecure. No



official, no matter how high, is above the law (Villavicencio v. Lukban, GR No. 14639, March 25, 1919). A public officer, who, not being thereunto authorized by law, shall compel persons to charge their residence, is liable for the crime of expulsion under Article 127 of the Revised Penal Code.

35. How is the crime of coup d'etat committed?

- 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. the crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office of employment, with or without civilian support or participation for the purpose of seizing or diminishing state participation for the purpose of seizing or diminishing state power (Article 134-A of the Revised Penal Code).

36. 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?

- a. disloyalty of public officers or employees;



- b. rebellion;
- c. conspiracy to commit rebellion;
- d. dereliction of duty.

SUGGESTED ANSWER:

B. The crime of disloyalty of public officers is committed by public officers who have failed to resist a rebellion by all the means in their power, or shall continue to discharge the duties of their offices under them (Article 137 of the Revised Penal Code). However, the public officer who performs any of the acts of disloyalty should not be in conspiracy with the rebels; otherwise, he will be guilty of rebellion, not merely disloyalty, because in conspiracy, the act of one is the act of all (The Revised Penal Code by CA Justice Luis Reyes). Since in the facts given, the public officers performed acts of disloyalty in conspiracy with the rebels, the crime committed is rebellion.

37. 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?

- 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. Depriving Congress of its legislative powers is an object of rebellion. Hence, inciting others to attain the purpose of rebellion by means of speeches or writing constitutes inciting to rebellion.

ALTERNATIVE ANSWER:

D. Inciting to sedition is committed by person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches or writings (Article 142). To commit inciting to sedition, the offender must incite others to rise publicly and tumultuously in order to attain any of the ends of sedition (People v. Arrogante, 39 O.G. 1974). In sum, the offender must incite others not only to accomplish any purposes of sedition (such as preventing the national government or public officer from freely exercising its or his function) but likewise to perform the acts of sedition (arising publicly and tumultuously). In the facts given, the person, who merely incited others to accomplish a sedition purpose, is not



committing inciting to sedition. Hence, “a” is not the answer.

Inciting to rebellion or insurrection is committed by a person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in Article 134 of the Revised Penal Code by means of speeches or writing (Article 138). The clause “shall incite others to the execution of any of the acts specified in Article 134” means that the offender shall incite to rise publicly and take up arms against the government for any of the purposes of rebellion (The Revised Penal Code by CA Justice Luis Reyes). To be held liable for inciting to rebellion, the offender must incite other not only to accomplish any purposes of rebellion (such as depriving legislature of its power) but likewise to perform the acts of rebellion (rising publicly and taking up arms against the government). in the facts given, the person, who merely incited others to accomplish a rebellion purpose, is not committing inciting to rebellion. Hence, “b” is not the answer.

Preventing the meeting of Congress through force or fraud constitutes the crime against popular representation (Article 143). In the facts given, the person did not employ fraud or

intimidation to prevent member of Congress from attending its meeting. Hence, “c” is not the answer.

Unlawful use of means of publication or unlawful utterances is committed by a person who by speeches or other means of publication, shall encourage disobedience to the constituted authorities (Article 154). Inciting others to deprive Congress of its legislative power constitutes unlawful utterances. Hence, “d” is the answer.

38. 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?

- a. sedition;
- b. **coup d'etat**;
- c. insurrection;
- d. public disorder.

SUGGESTED ANSWER:

B. The term “insurrection” is more commonly employed in reference to a movement which seeks merely to effect



some change of minor importance or to prevent the exercise of government authority with respect to particular matters or subjects (The Revised Penal Code by Justice Luis Reyes). Insurrection is punishable under Article 134 of the Revised Penal Code. In the facts given, this crime is committed since there is a public uprising and taking up arms against the government for purpose of removing the locality under the control of the offenders from the allegiance to the laws of the government (See: People v. Almazan, 37 O.G. 1937; Reyes).

39. When is a disturbance of public order deemed to be tumultuous?

- 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. The disturbance of public order shall be deemed to be tumultuous if caused by more than three persons who are armed or provided with means of violence (Article 153 of the Revised Penal Code).

40. 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?

- 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 prision 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. Violation of parliamentary immunity I committed by public officer who shall, while the Congress is in regular or special session, arrest any member thereof, except in case such member has committed a crime by a penalty higher than prision mayor (Article 145 of the Revised Penal Code).

[Note: While Article 145 protects legislators from arrest for offense punishable by not more than prision mayor (twelve years of imprisonment), the 1987 Constitution protects legislators from arrest for offense punishable by not more than six years of imprisonment. In *Matinez v. Morfe*, 44 SCRA 22, it was held that “Article 145 could not enlarge the immunity enjoyed by legislators under the Constitution.” Thus, the 1987 Constitution by

implication modifies Article 145 of the Revised Penal Code in the sense that an arrest of a member of Congress for a crime punishable by a penalty of more than prision correccional (six years of imprisonment) is not constitutive of the crime of violation of parliamentary immunity.]

41. 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?
- sedition;
 - disturbance of public order;
 - grave coercion;
 - direct assault.**

SUGGESTED ANSWER:

D. Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, is liable for the crime of direct assaults (Article 148 of the Revised Penal Code). The first mode of direct assault is tantamount to rebellion or sedition, without the element of public uprising (*People v. Recto*, GR No. 129069, October 17, 2001, En Banc). If the offender prevented by force the holding of a popular election in certain precincts, without public uprising, he may be held liable for direct assault of the first form



(Clarín v. Justice of Peace, GR No. L-7661, April 30, 1955).

42. Which of the following circumstances may be appreciated as aggravating in the crime of treason?

- a. **cruelty and ignominy;**
- b. evident premeditation;
- c. superior strength;
- d. treachery.

SUGGESTED ANSWER:

A. Treachery and abuse of superior strength are by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty (People v. Adlawan, GR No. L-456, March 29, 1949). Evident premeditation is inherent in treason because adherence and the giving of aid and comfort to the enemy is a long continued process requiring comfort to the enemy is a long continued process requiring for the successful consummation of the traitor's purpose a fixed, reflective and persistent determination and planning (People v. Racaza, GR No. L-365, January 21, 1949). However, cruelty may be appreciated in treason by deliberately augmenting the wrong by being unnecessarily cruel to captured guerrilla suspects, subjecting them to death and ignominy by arresting and maltreating a guerrilla suspect and then stripping his wife of her clothes and then abusing her

together with other Filipino girls (People v. Adlawan, supra).

43. 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?

- 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).

44. 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?

- 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 22).

45. Can the crime of treason be committed only by a Filipino citizen?

- 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. A foreigner owes temporary allegiance to the government of the place wherein he reside in return for the protection he receives. Such temporary allegiance continues during the period of hi



residence. If an alien, while residing in a foreign country, does an act, which would amount to treason if committed by a citizen of that country, he will be held liable for treason (52 Am Jur 797). Furthermore, Article 114 of the Revised Penal Code punishes resident alien for committing treason.

46. 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?

- 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. Maltreatment of prisoner is committed since the victim maltreated I under the charge of the offender. The offender shall be punished for maltreatment of prisoner in addition to his criminal

liability for physical injuries (Article 235 of the Revised Penal Code).

ALTERNATIVE ANSWER:

B. Maltreatment must relate to the correction or handling of a prisoner under his charge or must be for the purpose of extorting a confession, or of obtaining some information from the prisoner. A jailer who inflicted injuries on the prisoner because of personal grudge against him is liable for physical injuries only (People v. Javier, CA, 54 OG 6622; RPC by Luis Reyes). Maltreatment of prisoner is a crime committed by a public officer. If the public officer committed the act in his private capacity, this crime is not committed.

47. AA was convicted of proposal to commit treason. Under Article 115 of the Revised Penal Code, proposal to commit treason shall be punished by prison correccional and a fine not exceeding P5,000.00. Is the Indeterminate Sentence Law applicable to AA?

- a. Yes. The Indeterminate Sentence Law is applicable to AA because the maximum of prison 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 imposable 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.

48. What is the proper charge against a lawyer who reveals the secrets of his client learned by him in his professional capacity?
- The lawyer should be charged with revelation of secrets of private individual.
 - The lawyer should be charged with betrayal of trust.**
 - The lawyer should be charged with unauthorized revelation of classified materials.
 - 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).

49. 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?
- AB should be charged with complex crime of reckless imprudence resulting in damage to property with slight physical injuries.
 - AB should be charged with reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in damage to property.**
 - AB should be charged with complex crime of slight physical injuries with damage to property.
 - AB should be charged with slight physical injuries and reckless



imprudence resulting in damage to property.

SUGGESTED ANSWER:

B. Under Article 48 of the Revised Penal Code, there is a compound crime when a single act constitutes two or more grave or less grave felonies. Reckless imprudence resulting in slight physical injuries is a light felony; hence, resulting in slight physical injuries is a slight felony; hence, AB should not be charged with a complex crime since a light felony could not be made a component thereof. AB should be charged separately with reckless imprudence resulting in damage to property and reckless imprudence resulting in slight physical injuries (People v. Turla, 50 Phil. 1001)

[Note: The principle in Turla case contradicts the latest ruling of the Supreme Court in Ivler v. Modesto-San Pedro, GR No. 172716, November 17, 2010, where it was ruled that “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. The essence of the quasi-offense of criminal negligence under Article 365 of the Revised Penal Code lies in the execution of an

imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty. It does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense criminal negligence remains one and the same, and cannot be split into different crimes and prosecutions.’]

50. 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?

- 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 (Article 315 of the Revised Penal Code).

51. 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?

- 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 crimes commits using fictitious name (Article 178). Person, who substituted for a prisoner by taking his place in jail, is liable for delivering prisoners from jail because the removal of the prisoner from jail is by other means, that is, deceit (The Revised Penal Code by Luis Reyes). A person, who took the place of another who had been convicted by final judgment, would not necessarily use his own name. hence, he is also guilty of crime of using a fictitious name since he used a fictitious name to conceal the crime of delivering prisoners from jail.

52. 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?

- 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 (People v. Mantalba, GR No. 186227, July 20, 2011).

53. 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?

- 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.

54. AAA was convicted of theft by a Manila Court and sentenced to a straight penalty of one (1) year of prision 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?

- 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. AAA must be first found guilty of a subsequent offense before he can be prosecuted for violation of conditional pardon.

ALTERNATIVE ANSWER:

C. Even if AAA will be found guilty of a subsequent offense, just the same the court cannot require AAA to serve the unexpired portion of the original sentence. The penalty for violation of conditional pardon under Article 159 of the Revised Penal Code will depend upon the penalty remitted by the granting of pardon. The penalty remitted is the unexpired portion of the sentence at the time the pardon was accepted. If the unexpired portion of the penalty is not higher than six years, the convict shall then suffer penalty of prison correctional in its manimum period. Since the penalty remitted by the

conditional pardon granted to AAA does not exceed six years, the court cannot require the convict to serve the unexpired portion of his original sentence in addition to the penalty of prison correctional in its minimum period (See: Revised Penal Code by Luis Reyes).

55. 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?

- 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:

D. The crime of aiding and abetting a band of brigands is committed by a ny person knowingly and in any manner acting, abetting or protecting a band of brigands as described in the next preceding article, or giving them



information of the movements of the police or other peace officers of the Government, when the latter are acting in aid of the Government, or acquiring or receiving the property taken by such brigands (Article 307 of the Revised Penal Code).

ALTERNATIVE ANSWER:

C. Articles 306 and 307 of the Revised Penal Code govern brigandage while PD No. 532 highway robbery/brigandage. Since in the facts given, the persons protected or aided by the offender are described as highway robbers/brigands, the applicable law is PD No. 532 and not Revised Penal Code. Under Section 4 of this Decree, any person who knowingly and in any manner aids or protects “highway robbers/brigands” by giving them information about the movement of police shall be considered as an “accomplice” of the principal offenders and be punished in accordance with the revised Penal Code.

56. 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?

- 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. When the Code declare that killing committed by means of fire is murder, it intends that fire should be purposely adopted as a means to that end. There can be no murder without a design to take life. Murder qualified by means of fire absorbs the crime of arson since the latter is an inherent means to commit the former (People v. Baluntong, GR No. 182061, March 15, 2010; People v. Cedenio, GR No. 93485, June 27, 1994). A single act of burning the house of victims with the main objective of killing resulting in their deaths resulted in the complex crime of double murder committed by means of fire (People v. Gaffud, GR No. 168050, September, 19, 2008).

57. 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?

- 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. It was RR's representation and false pretenses that induced WW to part with her money. As a result RR's false pretenses and misrepresentations, WW suffered damages as the promised employment abroad never materialized and the money she paid was never recovered (People v. Sy, GR No, 183879, April 14, 2010).

The fact that WW actively participated in the processing of the illegal travel documents will nit exculpate RR from liability. WW was a helpless victim of circumstances and of fraud committed by RR. She was forced to take part in the processing of the falsified travel documents because she had already paid the processing fee. RR committed deceit by representing that she could secure WW with employment in Taiwan, the primary consideration that induced the latter to part with her money. WW was led to believe by RR that she possessed the power and qualifications to provide WW with employment abroad, when, in fact, she was not licensed or authorized to do so. Deceived, WW parted with her money and delivered the same to RR (People v. Sy, supra).

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. RR's acquittal in the illegal recruitment case does not prove that she is not guilty of estafa. Illegal recruitment and estafa are entirely different offenses and neither one necessarily includes or necessarily included in the other. A person who is convicted of illegal recruitment may, in addition, be convicted of estafa. In the same manner, a person acquitted of illegal recruitment may be held liable for estafa. Double jeopardy will not set in because illegal recruitment is malum prohibitum, in which there is no necessity to prove criminal intent, whereas estafa is malum in se, in the prosecution of which proof of criminal intent is necessary (People v. Sy, Supra).

58. 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?

- 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 (Gaviola v. People, GR No. 163927, January 27, 2006). 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 (See: People v. Bautista, CA-GR No. 43390, December 17, 1936).

59. What is the criminal liability, if any, of a physician who issues a false medical certificate in connection with the practice of his profession?

- 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. The crime of falsification of medical certificate is committed by any physician who, in connection, with the practice of his profession, shall issue a false certificate (Article 174). What is criminal under Article 174 is the issuance of false medical certificate. Submitting the false medical certificate to the court or causing prejudice or damage is not an element of this crime.

60. Under which of the following circumstances is probation not applicable?

- 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. The benefits of probation shall not be extended to those: (a) sentenced to serve a maximum term of imprisonment of more than six years; (b) convicted of any offense against the security of the State; (c) who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than Two Hundred Pesos (Section 9 of PD 968). Thus, probation is applicable (1) when the accused is sentenced to serve a maximum term of imprisonment of six years; (2) when the accused have presently (not previously) been convicted by final judgment of an offense punished by imprisonment of not less than one (1) month and one day and/or fine of not less P200; and (3) when the accused is convicted of security or public order. However, probation is not applicable when the accused is convicted of direct assault because this is a crime against the public order.



61. 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?

- 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. Theft is committed by a person who, having found lot property shall fail to deliver the same to the authorities or to its owner (Article 308 of the Revised Penal Code).

62. 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?

- 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:

B. 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 (People v. Pineda, GR No. L-26222, July 21, 1967). When one fires his firearm in succession, killing and wounding several persons, the different acts must be considered as distinct crimes (People v. Remollino, GR No. L-14008, September 30, 1960). When various victims expire from separate shots, such acts constitute separate and distinct crimes (People v. Tabaco, GR No. 100382-1000385, March 19, 1997).

63. 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?

- 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. Unlawful arrest was a necessary means to commit the crime of incriminatory machinations. The accused had to arrest the offended party because it was the only way that they could with facility detain him and, in the process, commingle therewith the marked one peso bill for purposes of incriminating him for the crime of corruption of public

officer (People v. Alagao, GR No. L-20721, April 30, 1966, En Banc).

64. 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?

- 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. Negligence indicates a deficiency of perception. If a person fails to take necessary precaution to avoid injury to person or damage to property, there is imprudence. If a person fails to pay proper attention and to use due diligence in foreseeing the injury or damage impending to be caused, there is negligence. Negligence usually involves lack of foresight. Imprudence usually involves lack of skill (The Revised Penal Code by Justice Luis Reyes).

65. Which of the following acts does not constitute estafa or other forms of swindling?



- 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 of the Revised Penal Code is committed by the owner of any “personal Property” who shall wrongfully take it from its lawful possessor, to the prejudice of the latter. In the facts giving in choice letter “c”, what is involved is a real property.

ALTERNATIVE ANSWER:

B. Since wrongfully taking real property from its lawful possessor to the prejudice of the latter is not covered by paragraph 3 of Article 316, the offense committed must perforce come within meaning and intentment of the blanket provision of first paragraph of Article 318 on other

deceit (See: People v. Ganasi, CA 61 OG 3603). Hence, “c” is not the answer.

Swindling under Article 316 (a) of RPC is committed by any person who, knowing that the real property is encumbered, shall dispose of the same. The law was taken from Article 455 of the Spanish Penal Code. Although, the words “como libre” in the Spanish Penal Code, which means “free from encumbrance” do not appear in the English text of RPC, nonetheless, the same are deemed incorporated in the RPC (In sum, the offender must dispose the real property free from encumbrance despite knowledge that is encumbered). The gravamen of the crime is the deposition of legally encumbered real property by the offender under the express representation that there is no encumbrance thereon. Hence, for one to be criminally liable for estafa under the law, the accused must make an express representation in the deed of conveyance that the property sold or disposed of is free from any encumbrance (Naya v. Abing, GR No. 146770, February 27, 2003). A person, who disposes real property knowing it to be encumbered, is not liable for swindling under Article 316 since the element of “express representation of no encumbrance” is not present. Hence, “b” is the answer.



66. 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?

- 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:

D. In Intod v. CA, GR No. 103119, October 21, 1992 – outside the house of the victim, accused with intent to kill fired at the bedroom, where the victim is supposed to be sleeping. No one was in the room when the accused fired the shots. No one was hit by the gun fire. The accused were convicted of impossible crime. Accused shoot the place where he thought his victim would be, although in reality, the victim was not present in said place and thus, the accused failed to accomplish their end due to it factual impossibility.

67. What crime is committed when a person ill-treats another by deed without causing any injury?

- 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).

68. 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?

- 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. 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.

Moreover, falsification of document by ecclesiastical is punishable under Article 171 of the Revised Penal Code. In case the offender is an ecclesiastical minister, the act of falsification I committed with respect to any record or document of such character that its falsification may affect the civil status of persons (The Revised Penal Code by Luis Reyes). Before the parochial registries of baptisms were considered as official books and registers, and the certificates taken from those books were considered as public documents (US v. Orosa, GR No. 2916, December 29, 1906). Thus, falsification of parochial document, which is considered public document, was constitutive of the crime of falsification

committed by ecclesiastical minister under Article 171 because such falsification affects the civil status of a person (See: The Revised Penal Code by Vicente Francisco). Now, parochial documents are now considered private writing (US v. Evangelista, 29 Phil 215), the falsification of which will not affect the civil status of a person.

69. Is the penalty for impossible crime applicable to one who attempts to commit a light felony of impossible materialization?

- 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:

C. The penalty for impossible crime I arresto mayor of 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.

70. 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?

- 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. The felony may be committed, not only through the misappropriation or the conversion of public fund or property to one's personal use, but also by knowingly allowing others to make use of or misappropriate the fund. The felony may thus be committed by dolo or by culpa. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence (People v. Pantaleon, Jr., GR No. 158694-96, March 13, 2009).

71. 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?

- 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:

D. Under Act No. 1697, any person who causes or procures another person to commit perjury is guilty of subornation of perjury. The Revised Penal Code, which has repealed Act No. 1697, does not expressly penalized subornation of perjury. However, a suborner, who causes or procure another person to commit perjury, is guilty as principal by inducement. In *People v. Pudol*, GR No. 45618, October 18, 1938 – The fact that subornation of perjury is not expressly penalized in the Revised Penal Code does not mean that the direct induction of a person by another to commit perjury has ceased to be a crime, because said crime is fully within the scope of that defined in Article 17 (2), of the said Code.

72. 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?

- 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. The last clause of Section 14 of RA No. 6539 as amended by RA No, 7659 provides: “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 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 (*People v. Mejia*, GR No. 118940-41 and GR No. 119407, July 7, 1997).

73. 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?

- 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.

74. 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?

- 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, and the resulting homicide is absorbed (People v. Baluntog, GR No. 182061, March 15, 2010; People v. Cedenio, GR No. 93485, June 27, 1994).

75. What crime is committed by a utility worker in government who destroys office files as an act of revenge against his supervisor?

- 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 of infidelity in the custody of paper under Article 226 of the Revised Penal Code is not committed since the files are not officially entrusted to the government utility worker by reason of his office. Official custody of the paper is an element of this crime. Estafa by destroying office files under Article 315 (3) (c) is not committed because of this crime, is lacking. Thus, the crime committed by the utility worker is malicious mischief.

2011 Criminal Law Exam MCQ (November 20, 2011)

(1) 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?

(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

(2) The alternative circumstance of relationship shall NOT be considered between

(A) mother-in-law and daughter-in-law.

(B) adopted son and legitimate natural daughter.

(C) aunt and nephew.

(D) stepfather and stepson.

(3) 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?

(A) Evident premeditation.

(B) None.

(C) Abuse of superior strength.

(D) Treachery.

(4) The presence of a mitigating circumstance in a crime

(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.

(5) He is an accomplice who

(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.

(6) 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?

(A) Ministers Resident

(B) Commercial Attache of a foreign country

(C) Ambassador

(D) Chiefs of Mission

(7) As a modifying circumstance, insanity

(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.

(8) 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?

(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.

(9) 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?

(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

(10) 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

(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.

(11) 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?

(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.

(12) The maxim "Nullum crimen nula poena sine lege" means that

(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.

(13) 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?

(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.

(14) 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

(A) mitigating vindication of grave offense.

(B) battered woman syndrome, a complete self-defense.

(C) incomplete self-defense.

(D) mitigating passion and obfuscation.

(15) There is violation of Art. 316, RPC (Other forms of Swindling) where

(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.

(16) 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

(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.

(17) 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?

(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.

(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

(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.

(19) In malversation of public funds, the offender's return of the amount malversed has the following effect

(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.

(20) The exchanges of highly offensive words between two quarrelling women in the presence of a crowd of people constitute

(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.

(21) Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner is liable for

(A) occupation or usurpation of personal property.

(B) civil damages only.

(C) theft.

(D) other deceits.

(22) A crime resulting from negligence, reckless imprudence, lack of foresight or lack of skill is called

(A) dolo.

(B) culpa.

(C) tortious crimes.

(D) quasi delict.

(23) 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

(A) a severed right hand.

(B) complete blindness.

(C) being deaf mute and dumb.

(D) a severed leg.

(24) An extenuating circumstance, which has the same effect as a mitigating circumstance, is exemplified by

(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.

(25) 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?



(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.

(26) 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?

(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.

(27) 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?

(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.

(28) 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?

(A) None since he killed her under exceptional circumstances.

(B) None since he acted under a mistake of fact.



(C) Parricide.

(D) Homicide.

(29) 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?

(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

(30) 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

(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.

(31) 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,

(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.

(32) Minority is a privileged mitigating circumstance which operates to reduce the penalty by a degree where the child is

(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.

(33) The crime of robbery in an inhabited house or public building is mitigated when the offenders

(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.

(34) A private person who assists the escape of a person who committed robbery shall be liable

(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.

(35) Which among the following circumstances do NOT qualify the crime of kidnapping?

(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.

(36) Removing, concealing or destroying documents to defraud another constitutes the crime of estafa if committed by

(A) any public officer.

(B) a public officer officially entrusted with the document.

(C) private individuals who executed the same.

(D) private individuals.

(37) 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?

(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

(38) 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?

(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.

(39) X, without intent to kill, aimed his gun at Z and fired it, hitting the latter who died as a consequence. Under the circumstances

(A) X cannot plead praetor intentionem since the intent to kill is presumed from the killing of the victim.

(B) X may plead praetor 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.

(40) Which of the following statements constitute Inciting to Sedition?

(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.

(41) 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.

(42) The mitigating circumstance of immediate vindication of a grave offense cannot be appreciated in a case where

(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.

(43) 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?

(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.

(44) 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?

(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.

(45) 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?

- (A) forcible abduction.
- (B) frustrated kidnapping.
- (C) attempted kidnapping.

(D) grave coercion.

(46) 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?

- (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.

(47) The aggravating circumstance of uninhabited place is aggravating in murder committed

(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.

(48) The penalty of perpetual or temporary special disqualification for the exercise of the right of suffrage does NOT deprive the offender of the right

- (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.

(49) 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

- (A) praeter intentionem.
- (B) incomplete self-defense preceded by undue provocation.
- (C) passion or obfuscation.**
- (D) complete self-defense.

(50) A public officer who immediately returns the bribe money handed over to him commits

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

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

- (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.

(52) Insuperable cause is an exempting circumstance which may be applied to

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

(53) Which of the following crimes is an exception to the Territoriality Rule in Criminal law?

- (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.**

(54) 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?

- (A) Conspiracy to commit indirect assault.
- (B) Attempted direct assault.
- (C) Conspiracy to commit direct assault.

(D) Illegal possession of firearms.

(55) 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?

- (A) Homicide.

(B) Murder if she deliberated on her action.

- (C) Giving Assistance to Suicide.
- (D) Euthanasia.

(56) When committed outside the Philippine territory, our courts DO NOT have jurisdiction over the crime of

- (A) treason.
- (B) piracy.
- (C) espionage.

(D) rebellion.

(57) Motive is generally IMMATERIAL in determining criminal liability EXCEPT when

- (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.

(58) Which of the following circumstances of dishonor of a check can be a basis for prosecution under the bouncing checks law?

- (A) The check was returned unpaid with stamp "stop payment," although the drawer's deposit was sufficient.

(B) The check, drawn and issued in the Philippines, was dishonored by the drawee bank in a foreign country.



(C) The check was presented to the bank for payment 6 months after the date of issue.

(D) The drawer of the dishonored check paid its value within 5 days from notice of dishonor.

(59) 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

(A) malicious mischief.

(B) malicious mischief with the alternative mitigating circumstance of relationship.

(C) malicious mischief with the alternative aggravating circumstance of relationship.

(D) RIGHT ANSWER the civil damage he caused.

(60) The classification of felonies into grave, less grave, and light is important in ascertaining

(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.

(61) A child in conflict with the law shall enjoy all the rights of a child until

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

(B) his minority is set off by some aggravating circumstance.

(C) he is proved to be 18 years or older.

(D) he forfeits such rights by gross misconduct and immorality.

(62) 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?

(A) Corruption of minors under the Penal Code

(B) Violation of the Child Pornography Act

(C) Violation of the Child Abuse Law



(D) None

(63) 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

(A) defense of honor.

(B) immediate vindication of a grave offense.

(C) passion or obfuscation.

(D) self-defense.

(64) The prescriptive period for bigamy is 15 years counted from the date of the

(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.

(65) 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?

(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.

(66) A qualifying aggravating circumstance

(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.

(67) 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?

(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.

(68) In an attempted felony, the offender's preparatory act

(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.

(69) 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?

(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.

(70) 003-1137-0001 A criminal action for rape is extinguished when the offender is forgiven by

(A) RIGHT ANSWER 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.

(71) 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

(A) 3 battering episodes.

(B) 4 battering episodes.

(C) 5 battering episodes.

(D) 2 battering episodes.



(72) A special complex crime is a composite crime

(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.

(73) 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?

(A) The Indonesian court.

(B) The Russian court.

(C) The Philippine court.

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

(74) 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

(A) complex crime proper.

(B) special complex crime.

(C) continuing crime.

(D) compound crime.

(75) 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

(A) rebellion.

(B) sedition.

(C) espionage.

(D) highway robbery.

References:

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