ANSWERS TO BAR

EXAMINATION QUESTIONS

IN

CRIMINAL LAW

ARRANGED BY TOPIC

(1994 – 2006)

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July 3, 2007

F O R W A R D

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We would like to seek the indulgence of the reader for some Bar Questions which are improperly classified under a topic and for some topics which are improperly or ignorantly phrased, for the authors are just Bar Reviewees who have prepared this work while reviewing for the Bar Exams under time constraints and within their limited knowledge of the law. We would like to seek the reader's indulgence for a lot of typographical errors in this work.

The Authors
July 26, 2005

Updated by;
July 3, 2007

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GENERAL PRINCIPLES

General Principles; Schools of thought in Criminal Law (1996)

1} What are the different schools of thought or theories in Criminal Law and describe each briefly.
2) To what theory does our Revised Penal Code belong?

SUGGESTED ANSWER:

1 There are two schools of thought in Criminal Law, and these are (a) the CLASSICAL THEORY, which simply means that the basis of criminal liabilities is human free will, and the purpose of the penalty is retribution which must be proportional to the gravity of the offense; and (b) the POSITIVIST THEORY, which considers man as a social being and his acts are attributable not just to his will but to other forces of society. As such, punishment is not the solution, as he is not entirely to be blamed; law and jurisprudence should not be the yardstick in the imposition of sanction, instead the underlying reasons would be inquired into.

2 We follow the classical school of thought although some provisions of eminently positivist in tendencies, like punishment of impossible crime, Juvenile circumstances, are incorporated in our Code.

General Principles; Territoriality (1994)

Abe, married to Liza, contracted another marriage with Connie in Singapore. Thereafter, Abe and Connie returned to the Philippines and lived as husband and wife in the hometown of Abe in Calamba, Laguna. 1) Can Abe be prosecuted for bigamy?

SUGGESTED ANSWER:

1) No, Abe may not be prosecuted for bigamy since the bigamous marriage was contracted or solemnized in Singapore, hence such violation is not one of those where the Revised Penal Code, under Art. 2 thereof, may be applied extraterritorially. The general rule on territoriality of criminal law governs the situation.

General Principles; Territoriality; Jurisdiction over Vessel (2000)

After drinking one (1) case of San Miguel beer and taking two plates of "pulutan", Binoy, a Filipino seaman, stabbed to death Sio My, a Singaporean seaman, aboard M/V "Princess of the Pacific", an overseas vessel which was sailing in the South China Sea. The vessel, although Panamanian registered, is owned by Lucio Sy, a rich Filipino businessman. When M/V "Princess of the Pacific" reached a Philippine Port at Cebu City, the Captain of the vessel turned over the assailant Binoy to the Philippine authorities. An information for homicide was filed against Binoy in the Regional Trial Court of Cebu City. He moved to quash the information for lack of jurisdiction. If you were the Judge, will you grant the motion? Why? (5%)

SUGGESTED ANSWER:

Yes, the Motion to Quash the Information should be granted. The Philippine court has no jurisdiction over the crime committed since it was committed on the high seas or outside of Philippine territory and on board a vessel not registered or licensed in the Philippines *(US vs. Fowler, 1 Phil 614)*

It is the registration of the vessel in accordance with the laws of the Philippines, not the citizenship of her owner, which makes it a Philippine ship. The vessel being registered in Panama, the laws of Panama govern while it is in the high seas.

Use of Aliases; When Allowed (2006)

When can a Filipino citizen residing in this country use an alias legally? Give 3 instances. (2.5%)

SUGGESTED ANSWER:

1 Pseudonym for literary purposes.
2 Use of aliases in cinema and television entertainment.
3 In athletics and sports activities (RA. 6085).
4 Under the witness protection program a person may adopt a different identity (RA. 6981).
5 When he has been baptized or customarily known by such alias.
6 When authorized by a competent court (CA. No. 142, as amended by RA. 6085).
7 When properly indicated in a Certificate of Candidacy (Omnibus Election Code).

FELONIES

Conspiracy (1997)

A had a grudge against F. Deciding to kill F, A and his friends, B, C, and D, armed themselves with knives and proceeded to the house of F, taking a taxicab for the purpose. About 20 meters from their destination, the group alighted and after instructing E, the driver, to wait, traveled on foot to the house of F. B positioned himself at a distance as the group's lookout. C and D stood guard outside the house. Before A could enter the house, D left the scene without the knowledge of the others. A stealthily entered the house and stabbed F. F ran to the street but was blocked by C, forcing him to flee towards another direction. Immediately after A had stabbed F, A also stabbed G who was visiting F. Thereafter, A exiled from the house and, together with B and C, returned to the waiting taxicab and motored away. G died. F survived. Who are liable for the death of G and the physical injuries of F?

SUGGESTED ANSWER:

A alone should be held liable for the death of G. The object of the conspiracy of A. B, C, and D was to kill F only. Since B, C, and D did not know of the stabbing of G by A, they cannot be held criminally therefor. E, the driver, cannot be also held liable for the death of G since the former was completely unaware of said killing.

For the physical injuries of F, A, B and C. should be held liable therefore. Even if it was only A who actually stabbed and caused physical injuries to G, B and C are nonetheless liable for conspiring with A and for contributing positive acts which led to the realization of a common criminal intent. B positioned himself as a lookout, while C blocked F's escape. D, however, although part of the conspiracy, cannot be held liable because he left the scene before A could enter the house where the stabbing occurred. Although he was earlier part of the conspiracy, he did not personally participate in the execution of the crime by acts which directly tended toward the same end *(People vs. Tomoro, et al 44 Phil. 38),*

In the same breath, E, the driver, cannot be also held liable for the infliction of physical injuries upon F because there is no showing that he had knowledge of the plan to kill F.

Conspiracy; Avoidance of Greater Evil (2004)

BB and CC, both armed with knives, attacked FT. The victim's son, ST, upon seeing the attack, drew his gun but was prevented from shooting the attackers by AA, who grappled with him for possession of the gun. FT died from knife wounds. AA, BB and CC were charged with murder.

In his defense, AA invoked the justifying circumstance of avoidance of greater evil or injury, contending that by preventing ST from shooting BB and CC, he merely avoided a greater evil. Will AA's defense prosper? Reason briefly. (5%)

SUGGESTED ANSWER:

No, AA's defense will not prosper because obviously there was a conspiracy among BB, CC and AA, such that the principle that when there is a conspiracy, the act of one is the act of all, shall govern. The act of ST, the victim's son, appears to be a legitimate defense of relatives; hence, justified as a defense of his father against the unlawful aggression by BB and CC. ST's act to defend his father's life, cannot be regarded as an evil inasmuch as it is, in the eyes of the law, a lawful act.

What AA did was to stop a lawful defense, not greater evil, to allow BB and CC achieve their criminal objective of stabbing FT.

Conspiracy; Co-Conspirator (1998)

Juan and Arturo devised a plan to murder Joel. In a narrow alley near Joel's house, Juan will hide behind the big lamppost and shoot Joel when the latter passes through on his way to work. Arturo will come from the other end of the alley and simultaneously shoot Joel from behind. On the appointed day, Arturo was apprehended by the authorities before reaching the alley. When Juan shot Joel as planned, he was unaware that Arturo was arrested earlier. Discuss the criminal liability of Arturo, if any. [5%]

SUGGESTED ANSWER:

Arturo, being one of the two who devised the plan to murder Joel, thereby becomes a co-principal by direct conspiracy. What is needed only is an overt act and both will incur criminal liability. Arturo's liability as a conspirator arose from his participation in jointly devising the criminal plan with Juan, to kill Jose. And it was pursuant to that conspiracy that Juan killed Joel. The conspiracy here is actual, not by inference only. The overt act was done pursuant to that conspiracy whereof Arturo is co-conspirator. There being a conspiracy, the act of one is the act of all. Arturo, therefore, should be liable as a co-conspirator but the penalty on him may be that of an accomplice only *(People vs. Nierra, 96 SCRA 1; People us. Medrano, 114 SCRA 335)* because he was not able to actually participate in the shooting of Joel, having been apprehended before reaching the place where the crime was committed.

ALTERNATIVE ANSWER:

Arturo is not liable because he was not able to participate in the killing of Joel. Conspiracy itself is not punishable unless expressly provided by law and this is not true in the case of Murder. A co-conspirator must perform an overt act pursuant to the conspiracy.

Conspiracy; Common Felonious Purpose (1994)

At about 9:30 in the evening, while Dino and Raffy were walking along Padre Faura Street, Manila. Johnny hit them with a rock injuring Dino at the back. Raffy approached Dino, but suddenly, Bobby, Steve, Danny and Nonoy surrounded the duo. Then Bobby stabbed Dino. Steve, Danny, Nonoy and Johnny kept on hitting Dino and Raffy with rocks. As a result. Dino died, Bobby, Steve, Danny, Nonoy and Johnny were charged with homicide. Is there conspiracy in this case?

SUGGESTED ANSWER:

Yes, there is conspiracy among the offenders, as manifested by their concerted actions against the victims, demonstrating a common felonious purpose of assaulting the victims. The existence of the conspiracy can be inferred or deduced from the manner the offenders acted in commonly attacking Dino and Raffy with rocks, thereby demonstrating a unity of criminal design to inflict harm on their victims.

Conspiracy; Complex Crime with Rape (1996)

Jose, Domingo, Manolo, and Fernando, armed with bolos, at about one o'clock in the morning, robbed a house at a desolate place where Danilo, his wife, and three daughters were living. While the four were in the process of ransacking Danilo's house, Fernando, noticing that one of Danilo's daughters was trying to get away, ran after her and finally caught up with her in a thicket somewhat distant from the house. Fernando, before bringing back the daughter to the house, raped her first. Thereafter, the four carted away the belongings of Danilo and his family. a) What crime did Jose, Domingo, Manolo and

Fernando commit? Explain.

b) Suppose, after the robbery, the four took turns in raping the three daughters of Danilo inside the latter's house, but before they left, they killed the whole family to prevent identification, what crime did the four commit? Explain.

SUGGESTED ANSWER:

(a) Jose, Domingo, and Manolo committed Robbery, while Fernando committed complex crime of Robbery with Rape, Conspiracy can be inferred from the manner the offenders committed the robbery but the rape was committed by Fernando at a place "distant from the house" where the robbery was committed, not in the presence of the other conspirators. Hence, Fernando alone should answer for the rape, rendering him liable for the special complex crime. *(People vs. Canturia et. al, G.R. 108490, 22 June 1995}*

b) The crime would be Robbery with Homicide ... (implied: there is still conspiracy)

Conspiracy; Flight to Evade Apprehension (2003)

A and B, both store janitors, planned to kill their employer C at midnight and take the money kept in the cash register. A and B together drew the sketch of the store, where they knew C would be sleeping, and planned the sequence of their attack. Shortly before midnight, A and B were ready to carry out the plan. When A was about to lift C's mosquito net to thrust his dagger, a police car with sirens blaring passed by. Scared, B ran out of the store and fled, while A went on to stab C to death, put the money in the bag, and ran outside to look for B. The latter was nowhere in sight. Unknown to him, B had already left the place. What was the participation and corresponding criminal liability of each, if any? Reasons. 8%

SUGGESTED ANSWER:

There was an expressed conspiracy between A and B to kill C and take the latter's money. The planned killing and taking of the money appears to be intimately related as component crimes, hence a special complex crime of robbery with homicide. The conspiracy being expressed, not just implied, A and B are bound as co-conspirators after they have planned and agreed on the sequence of their attack even before they committed the crime. Therefore, the principle in law that when there is a conspiracy, the act of one is the act of all, already governs them. In fact, A and B were already in the store to carry out their criminal plan.

That B ran out of the store and fled upon hearing the sirens of the police car, is not spontaneous desistance but flight to evade apprehension. It would be different if B then tried to stop A from continuing with the commission of the crime; he did not. So the act of A in pursuing the commission of the crime which both he and B designed, planned, and commenced to commit, would also be the act of B because of their expressed conspiracy. Both are liable for the composite crime of robbery with homicide.

ALTERNATIVE ANSWER:

A shall incur full criminal liability for the crime of robbery with homicide, but B shall not incur criminal liability because he desisted. B's spontaneous desistance, made before all acts of execution are performed, is exculpatory. Conspiracy to rob and kill is not per se punishable.

The desistance need not be actuated by remorse or good motive. It is enough that the discontinuance comes from the person who has begun the commission of the crime but before all acts of execution are performed. A person who has began the commission of a crime but desisted, is absolved from criminal liability as a reward to one, who having set foot on the verge of crime, heeds the call of his conscience and returns to the path of righteousness.

Conspiracy; Flight to Evade Apprehension (2003)

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Conspiracy; Implied Conspiracy (1998)
What is the doctrine of implied conspiracy? [3%]
SUGGESTED ANSWER:
The doctrine of implied conspiracy holds two or more persons participating in the commission of a crime collectively responsible and liable as co-conspirators although absent any agreement to that effect, when they act in concert, demonstrating unity of criminal intent and a common purpose or objective. The existence of a conspiracy shall be inferred or deduced from their criminal participation in pursuing the crime and thus the act of one shall be deemed the act of all.

Conspiracy; Implied Conspiracy; Effects (2003)
State the concept of "implied conspiracy" and give its legal effects. 4%
SUGGESTED ANSWER:
An "IMPLIED CONSPIRACY" is one which is only inferred or deduced from the manner the participants in the commission of crime carried out its execution. Where the offenders acted in concert in the commission of the crime, meaning that their acts are coordinated or synchronized in a way indicative that they are pursuing a common criminal objective, they shall be deemed to be acting in conspiracy and their criminal liability shall be collective, not individual.

The legal effects of an "implied conspiracy" are: a) Not all those who are present at the scene of the crime will be considered conspirators; b) Only those who participated by criminal acts in the commission of the crime will be considered as co conspirators; and c) Mere acquiescence to or approval of the commission of the crime, without any act of criminal participation, shall not render one criminally liable as co-conspirator.

Criminal Liability: Destructive Arson (2000)
A, B, C and D, all armed with armalites, proceeded to the house of X. Y, a neighbor of X, who happened to be passing by, pointed to the four culprits the room that X occupied. The four culprits peppered the room with bullets. Unsatisfied, A even threw a hand grenade that totally destroyed X's room. However, unknown to the four culprits, X was not inside the room and nobody was hit or injured during the Incident. Are A, B, C and D liable for any crime? Explain. (3%)
SUGGESTED ANSWER:
Yes. A, B. C and D are liable for destructive arson because of the destruction of the room of X with the use of an explosive, the hand grenade. Liability for an impossible crime is to be imposed only if the act committed would not constitute any other crime under the Revised Penal Code. Although the facts involved are parallel to the case of *Intod vs. Court of Appeals (215 SCRA 52)*, where it was ruled that the liability of the offender was for an impossible crime, no hand grenade was used in said case, which constitutes a more serious crime though different from what was intended,

Criminal Liability: Felonious Act of Scaring (1996) Alexander, an escaped convict, ran amuck on board a Superlines Bus bound for Manila from Bicol and killed ten (10) persons. Terrified by the incident, Carol and Benjamin who are passengers of the bus, jumped out of the window and while lying unconscious after hitting the pavement of the road, were ran over and crushed to death by a fast moving Desert Fox bus tailing the Superlines Bus.

Can Alexander be held liable for the death of Carol and Benjamin although he was completely unaware that the two jumped out of the bus? Explain.
SUGGESTED ANSWER:
Yes, Alexander can be held liable for the death of Carol and Benjamin because of felonious act of running was the proximate cause of the victim's death. The rule is that when a person, by a felonious act, generates in the mind of another a sense of imminent danger, prompting the latter to escape from or avoid such danger and in the process, sustains injuries or dies, the person committing the felonious act is responsible for such injuries or death.

(US vs. Valdez, 41 Phil, 1497; People vs. Apra, 27 SCRA 1037.)

Criminal Liability: Felonious Act; Proximate Cause (1996)
Vicente hacked Anacleto with a bolo but the latter was able to parry it with his hand, causing upon him a two-inch wound on his right palm. Vicente was not able to hack Anacleto further because three policemen arrived and threatened to shoot Vicente if he did not drop his bolo. Vicente was accordingly charged by the police at the prosecutor's office for attempted homicide. Twenty-five days later, while the preliminary investigation was in progress, Anacleto was rushed to the hospital because of symptoms of tetanus infection on the two-inch wound inflicted by Vicente. Anacleto died the following day. Can Vicente be eventually charged with homicide for the death of Anacleto? Explain.
SUGGESTED ANSWER:
Yes, Vicente may be charged of homicide for the death of Anacleto, unless the tetanus infection which developed twenty five days later, was brought about by an efficient supervening cause. Vicente's felonious act of causing a two-inch wound on Anacleto's right palm may still be regarded as the proximate cause of the latter's death because without such wound, no tetanus infection could develop from the victim's right palm, and without

such tetanus infection the victim would not have died with it.

Criminal Liability: Impossible Crimes (2000)

What is an impossible crime? (2%)

Is an impossible crime really a crime? (2%)

SUGGESTED ANSWER:

1 An impossible crime is an act which would be an offense against person or property, were if not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means (Art. 4, par. 2, RPC)

2 No, an impossible crime is not really a crime. It is only so-called because the act gives rise to criminal liability. But actually, no felony is committed. The accused is to be punished for his criminal tendency or propensity although no crime was committed.

Criminal Liability; Felonious Act of Scaring (2001) Maryjane had two suitors - Felipe and Cesar. She did not openly show her preference but on two occasions, accepted Cesar's invitation to concerts by Regine and Pops. Felipe was a working student and could only ask Mary to see a movie which was declined. Felipe felt insulted and made plans to get even with Cesar by scaring him off somehow. One day, he entered Cesar's room in their boarding house and placed a rubber snake which appeared to be real in Cesar's backpack. Because Cesar had a weak heart, he suffered a heart attack upon opening his backpack and seeing the snake. Cesar died without regaining consciousness. The police investigation resulted in pinpointing Felipe as the culprit and he was charged with Homicide for Cesar's death. In his defense, Felipe claimed that he did not know about Cesar's weak heart and that he only intended to play a practical joke on Cesar. Is Felipe liable for the death of Cesar or will his defense prosper? Why? (5%}

SUGGESTED ANSWER:

Yes, Felipe is liable for the death of Cesar but he shall be given the benefit of the mitigating circumstance that he did not intend to commit so grave a wrong as that which was committed (Art. 13, par. 3, RPC).

When Felipe intruded into Cesar's room without the latter's consent and took liberty with the letter's backpack where he placed the rubber snake. Felipe was already committing a felony. And any act done by him while committing a felony is no less wrongful, considering that they were part of "plans to get even with Cesar".

Felipe's claim that he intended only "to play a practical joke on Cesar" does not persuade, considering that they are not friends but in fact rivals in courting Maryjane. This case is parallel to the case of *People vs. Pugay*, et al.

ALTERNATIVE ANSWER:

No, Felipe is not liable because the act of frightening another is not a crime. What he did may be wrong, but not all wrongs amount to a crime. Because the act which caused the death of Cesar is not a crime, no criminal liability may arise therefrom.

Criminal Liability; Felonious Act of Scaring (2005)

Belle saw Gaston stealing the prized cock of a neighbor and reported him to the police. Thereafter, Gaston, while driving a car saw Belle crossing the street. Incensed that Belle had reported him, Gaston decided to scare her by trying to make it appear that he was about to run her over. He revved the engine of his car and drove towards her but he applied the brakes. Since the road was slippery at that time, the vehicle skidded and hit Belle causing her death. Was gaston criminally liable? What is the liability of Gaston? Why? (4%)

SUGGESTED ANSWER:

Yes, Gaston is liable for Belle's death because even though Gaston has no intent to kill Belle rather just to scare Belle. "To scare" does not indicate intent to kill. However, under Art. 4 of the Revised Penal Code, provides in part that criminal liability shall be incurred by any person committing a felony although the wrongful act done be different from that which he intended. In other words, the rule is that when a person, by a felonious act, generates in the mind of another a sense of imminent danger, prompting the latter to escape from or avoid such danger and in the process, sustains injuries or dies, the person committing the felonious act is responsible for such injuries or death. *(US vs. Valdez, 41 Phil, 1497; People vs. Apra, 27 SCRA 1037.)*

ALTERNATIVE ANSWER:

Yes, Gaston is liable for Belle's death because by his acts of revving the engine of his car and driving towards Belle is felonious, and such felonious act was the proximate cause of the vehicle to skid and hit Belle, resulting in the latter's death. Stated otherwise, the death of Belle was the direct, natural and logical consequence of Gaston's felonious act. *(People v. Arpa, 27 SCRA 1037).*

Criminal Liability; Felonious Act; Immediate Cause (2003)

The conduct of wife A aroused the ire of her husband B. Incensed with anger almost beyond his control, B could not help but inflict physical injuries on A. Moments after B started hitting A with his fists, A suddenly complained of severe chest pains. B, realizing that A was indeed in serious trouble, immediately brought her to the hospital. Despite efforts to alleviate A's pains, she died of heart attack. It turned out that she had been suffering from a lingering heart ailment. What crime, if any, could B be held guilty of? 8%

SUGGESTED ANSWER:

B could be held liable for parricide because his act of hitting his wife with fist blows and therewith inflicting physical injuries on her, is felonious. A person committing a felonious act incurs criminal liability although the wrongful consequence is different from what he intended (Art. 4, par. 1, Revised Penal Code).

Although A died of heart attack, the said attack was generated by B's felonious act of hitting her with his fists. Such felonious act was the immediate cause of the heart attack, having materially contributed to and hastened A's death. Even though B may have acted without intent to kill his wife, lack of such intent is of no moment when the victim dies. However, B may be given the mitigating circumstance of having acted without intention to commit so grave a wrong as that committed (Art. 13, par. 3, Revised Penal Code).

Criminal Liability; Felonious Act; Proximate Cause (1994)

Bhey eloped with Scott. Whereupon, Bhey's father, Robin, and brother, Rustom, went to Scott's house. Upon reaching the house, Rustom inquired from Scott about his sister's whereabouts, while Robin shouted and threatened to kill Scott. The latter then went downstairs but Rustom held his (Scott's) waist. Meanwhile Olive, the elder sister of Scott, carrying her two-month old child, approached Rustom and Scott to pacify them. Olive attempted to remove Rustom's hand from Scott's waist. But Rustom pulled Olive's hand causing her to fall over her baby. The baby then died moments later. Is Rustom criminally liable for the death of the child?

SUGGESTED ANSWER:

Yes, Rustom is criminally liable for the death of the child because his felonious act was the proximate cause of such death. It was Rustom's act of pulling Olive's hand which caused the latter to fall on her baby. Had It not been for said act of Rustom, which is undoubtedly felonious (at least slight coercion) there was no cause for Olive to fall over her baby. In short, Rustom's felonious act is the cause of the evil caused. Any person performing a felonious act is criminally liable for the direct, natural and logical consequence thereof although different from what he intended *(Art. 4, par. 1, RFC; People vs, Pugay, et al, GR No. 74324, Nov. 18, 1988).*

Criminal Liability; Felonious Act; Proximate Cause (1997)

While the crew of a steamer prepared to raise anchor at the Pasig River, A, evidently impatient with the progress of work, began to use abusive language against the men. B, one of the members of the crew, remonstrated saying that they could work best if they were not insulted. A took B's attitude as a display of insubordination and, rising in a rage, moved towards B wielding a big knife and threatening to stab B. At the instant when A was only a few feet from B, the latter, apparently believing himself to be in great and immediate peril, threw himself into the water, disappeared beneath the surface, and drowned. May A be held criminally liable for the death of B?

SUGGESTED ANSWER:

Yes. A can be held criminally liable for the death of B, Article 4 of the Revised Penal Code provides in part that criminal liability shall be incurred by any person committing a felony although the wrongful act done be different from that which he intended. In *U.S. vs. Valdez 41 Phil. 497.* where the victim who was threatened by the accused with a knife, jumped into the river but because of the strong current or because he did not know how to swim, he drowned, the Supreme Court affirmed the conviction for homicide of the accused because, if a person against whom a criminal assault is directed believes himself to be in danger of death or great bodily harm and in order to escape jumps into the water, impelled by the instinct of self-preservation, the assailant is responsible for the homicide in case death results by drowning.

Criminal Liability; Felonious Act; Proximate Cause (1999)

During the robbery in a dwelling house, one of the culprits happened to fire his gun upward in the ceiling without meaning to kill anyone. The owner of the house who was hiding thereat was hit and killed as a result.

The defense theorized that the killing was a mere accident and was not perpetrated in connection with, or for purposes of, the robbery. Will you sustain the defense? Why? (4%)

SUGGESTED ANSWER:

No, I will not sustain the defense. The act being felonious and the proximate cause of the victim's death, the offender is liable therefore although it may not be intended or different from what he intended. The offender shall be prosecuted for the composite crime of robbery with homicide, whether the killing was intentional or accidental, as long as the killing was on occasion of the robbery.

Criminal Liability; Felonious Act; Proximate Cause (2001)

Luis Cruz was deeply hurt when his offer of love was rejected by his girlfriend Marivella one afternoon when he visited her. When he left her house, he walked as if he was sleepwalking so much so that a teenage snatcher was able to grab his cell phone and flee without being chased by Luis. At the next LRT station, he boarded one of the coaches bound for Baclaran. While seated, he happened to read a newspaper left on the seat and noticed that the headlines were about the sinking of the Super Ferry while on its way to Cebu. He went over the list of missing passengers who were presumed dead and came across the name of his grandfather who had raised him from childhood after he was orphaned. He was shocked and his mind went blank for a few minutes, after which he ran amuck and, using his balisong, started stabbing at the passengers who then scampered away, with three of them Jumping out of the train and landing on the road below. All the three passengers died later of their injuries at the hospital. Is Luis liable for the death of the three passengers who jumped out of the moving train? State your reasons. (5%)

SUGGESTED ANSWER:

Yes, Luis is liable for their deaths because he was committing a felony when he started stabbing at the passengers and such wrongful act was the proximate cause of said passengers' jumping out of the train; hence their deaths.

Under Article 4, Revised Penal Code, any person committing a felony shall incur criminal liability although the wrongful act done be different from that which he intended. In this case, the death of the three passengers was the direct, natural and logical consequence of Luis' felonious act which created an immediate sense of danger in the minds of said passengers who tried to avoid or escape from it by jumping out of the train. *(People vs. Arpa, 27 SCRA 1O37; U.S. vs. Valdez, 41 Phil. 497}*

Criminal Liability; Felonious Act; Proximate Cause (2004)

On his way home from office, ZZ rode in a jeepney. Subsequently, XX boarded the same jeepney. Upon reaching a secluded spot in QC, XX pulled out a grenade from his bag and announced a hold-up. He told ZZ to surrender his watch, wallet and cellphone. Fearing for his life, ZZ jumped out of the vehicle. But as he fell, his head hit the pavement, causing his instant death . Is XX liable for ZZ's death? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes, XX is liable for ZZ's death because his acts of pulling out a grenade and announcing a hold-up, coupled with a demand for the watch, wallet and cellphone of ZZ is felonious, and such felonious act was the proximate cause of ZZ's jumping out of the jeepney, resulting in the latter's death. Stated otherwise, the death of ZZ was the direct, natural and logical consequence of XX's felonious act which created an immediate sense of danger in the mind of ZZ who tried to avoid such danger by jumping out of the jeepney *(People v. Arpa, 27 SCRA 1037).*

Criminal Liability; Impossible Crime (2004)

OZ and YO were both courting their co-employee, SUE. Because of their bitter rivalry, OZ decided to get rid of YO by poisoning him. OZ poured a substance into YO's coffee thinking it was arsenic. It turned out that the substance was white sugar substitute known as Equal. Nothing happened to YO after he drank the coffee. What criminal liability did OZ incur, if any? Explain briefly. (5%)

SUGGESTED ANSWER:

OZ incurred criminal liability for an impossible crime of murder. Criminal liability shall be incurred by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means (Art. 4, par. 2, RFC).

In the problem given, the impossibility of accomplishing the crime of murder, a crime against persons, was due to the employment of ineffectual means which OZ thought was poison. The law imputes criminal liability to the offender although no crime resulted, only to suppress his criminal propensity because subjectively, he is a criminal though objectively, no crime was committed.

Criminal Liability; Impossible Crimes (1994)

JP, Aries and Randal planned to kill Elsa, a resident of Barangay Pula, Laurel, Batangas. They asked the assistance of Ella, who is familiar with the place.

On April 3, 1992, at about 10:00 in the evening, JP, Aries and Randal, all armed with automatic weapons, went to Barangay Pula. Ella, being the guide, directed her companions to the room in the house of Elsa. Whereupon, JP, Aries and Randal fired their guns at her room. Fortunately, Elsa was not around as she attended a prayer meeting that evening in another barangay in Laurel.

JP, et al, were charged and convicted of attempted murder by the Regional Trial Court at Tanauan, Batangas.

On appeal to the Court of Appeals, all the accused ascribed to the trial court the sole error of finding them guilty of attempted murder. If you were the ponente, how will you decide the appeal?

SUGGESTED ANSWER:

If I were the ponente, I will set aside the judgment convicting the accused of attempted murder and instead find them guilty of impossible crime under Art. 4, par. 2, RPC, in relation to Art. 59, RPC. Liability for impossible crime arises not only when the impossibility is legal, but likewise when it is factual or physical impossibility, as in the case at bar. Elsa's absence from the house is a physical impossibility which renders the crime intended Inherently incapable of accomplishment. To convict the accused of attempted murder would make Art. 4, par. 2 practically useless as all circumstances which prevented the consummation of the offense will be treated as an incident independent of the actor's will which is an element of attempted or frustrated felony *(Intod vs. CA, 215 SCRA 52).*

Criminal Liability: Impossible Crimes (1998)

Buddy always resented his classmate, Jun. One day. Buddy planned to kill Jun by mixing poison in his lunch. Not knowing where he can get poison, he approached another classmate, Jerry to whom he disclosed his evil plan. Because he himself harbored resentment towards Jun, Jerry gave Buddy a poison, which Buddy placed on Jun's food. However, Jun did not die because, unknown to both Buddy and Jerry, the poison was actually powdered milk. 1, What crime or crimes, if any, did Jerry and Buddy commit? [3%]

2. Suppose that, because of his severe allergy to powdered milk, Jun had to be hospitalized for 10 days for ingesting it. Would your answer to the first question be the same? [2%]

SUGGESTED ANSWER:

1. Jerry and Buddy are liable for the so-called "impossible crime" because, with intent to kill, they tried to poison Jun and thus perpetrate Murder, a crime against persons. Jun was not poisoned only because the would-be killers were unaware that what they mixed with the food of Jun

was powdered milk, not poison. In short, the act done with criminal intent by Jerry and Buddy, would have constituted a crime against persons were it not for the inherent inefficacy of the means employed. Criminal liability is incurred by them although no crime resulted, because their act of trying to poison Jun is criminal.

2. No, the answer would not be the same as above. Jerry and Buddy would be liable instead for less serious physical injuries for causing the hospitalization and medical attendance for 10 days to Jun. Their act of mixing with the food eaten by Jun the matter which required such medical attendance, committed with criminal intent, renders them liable for the resulting injury.

Criminal Liability; Impossible Crimes; Kidnapping (2000)

Carla, 4 years old, was kidnapped by Enrique, the tricycle driver paid by her parents to bring and fetch her to and from school. Enrique wrote a ransom note demanding P500,000.00 from Carla's parents in exchange for Carla's freedom. Enrique sent the ransom note by mail. However, before the ransom note was received by Carla's parents, Enrique's hideout was discovered by the police. Carla was rescued while Enrique was arrested and incarcerated. Considering that the ransom note was not received by Carla's parents, the investigating prosecutor merely filed a case of "Impossible Crime to Commit Kidnapping" against Enrique. Is the prosecutor correct? Why? (3%)

SUGGESTED ANSWER:

No, the prosecutor is not correct in filing a case for "impossible crime to commit kidnapping" against Enrique. Impossible crimes are limited only to acts which when performed would be a crime against persons or property. As kidnapping is a crime against personal security and not against persons or property, Enrique could not have incurred an "impossible crime" to commit kidnapping. There is thus no impossible crime of kidnapping.

Mala in Se vs. Mala Prohibita (1997)

1 Distinguish between crimes mala in se and crimes mala prohibita.

2 May an act be malum in se and be, at the same time, malum prohibitum?

SUGGESTED ANSWER:

Crimes mala in se are felonious acts committed by dolo or culpa as defined in the Revised Penal Code. Lack of criminal intent is a valid defense, except when the crime results from criminal negligence. On the other hand, crimes mala prohibita are those considered wrong only because they are prohibited by statute. They constitute violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society.

SUGGESTED ANSWER:

Yes, an act may be malum in se and malum prohibitum at the same time. In *People v. Sunico, et aL. (CA 50 OG 5880)* it was held that the omission or failure of election inspectors and poll clerks to include a voter's name in the registry list of voters is wrong per se because it disenfranchises a voter of his right to vote. In this regard it is considered as malum in se. Since it is punished under a special law (Sec. 101 and 103, Revised Election Code), it is considered malum prohibitum.

Mala in Se vs. Mala Prohibita (1999)

Distinguish " mala in se" from " mala prohibita"(3%)

SUGGESTED ANSWER:

In "mala in se", the acts constituting the crimes are inherently evil, bad or wrong, and hence involves the moral traits of the offender; while in "mala prohibita", the acts constituting the crimes are not inherently bad, evil or wrong but prohibited and made punishable only for public good. And because the moral trait of the offender is Involved in "mala in se". Modifying circumstances, the offender's extent of participation in the crime, and the degree of accomplishment of the crime are taken into account in imposing the penalty: these are not so in "mala prohibita" where criminal liability arises only when the acts are consummated.

Mala in Se vs. Mala Prohibita (2001)

Briefly state what essentially distinguishes a crime mala prohibita from a crime mala in se. (2%)

SUGGESTED ANSWER:

In crimes mala prohibita, the acts are not by nature wrong, evil or bad. They are punished only because there is a law prohibiting them for public good, and thus good faith or lack of criminal intent in doing the prohibited act is not a defense.

In crimes mala in se, the acts are by nature wrong, evil or bad, and so generally condemned. The moral trait of the offender is involved; thus, good faith or lack of criminal Intent on the part of the offender is a defense, unless the crime is the result of criminal negligence. Correspondingly, modifying circumstances are considered in punishing the offender.

Mala in Se vs. Mala Prohibita (2003)

Distinguish, in their respective concepts and legal implications, between crimes mala in se and crimes mala prohibits. 4%

SUGGESTED ANSWER:

In concept: Crimes mala in se are those where the acts or omissions penalized are inherently bad, evil, or wrong that they are almost universally condemned.

Crimes mala prohibita are those where the acts penalized are not inherently bad, evil, or wrong but prohibited by law for public good, public welfare or interest and whoever violates the prohibition are penalized.

In legal implications: In crimes mala in se, good faith or lack of criminal intent/ negligence is a defense, while in crimes mala prohibita, good faith or lack of criminal intent or malice is not a defense; it is enough that the prohibition was voluntarily violated.

Also, criminal liability is generally incurred in crimes mala in se even when the crime is only attempted or frustrated, while in crimes mala prohibita, criminal liability is generally incurred only when the crime is consummated.

Also in crimes mala in se, mitigating and aggravating circumstances are appreciated in imposing the penalties, while in crimes mala prohibita, such circumstances are not appreciated unless the special law has adopted the scheme or scale of penalties under the Revised Penal Code.

Mala Prohibita; Actual Injury Required (2000)

Mr. Carlos Gabisi, a customs guard, and Mr. Rico Yto, a private Individual, went to the office of Mr. Diether Ocuarto, a customs broker, and represented themselves as agents of Moonglow Commercial Trading, an Importer of children's clothes and toys. Mr. Gabisi and Mr. Yto engaged Mr. Ocuarto to prepare and file with the Bureau of Customs the necessary Import Entry and Internal Revenue Declaration covering Moonglow's shipment. Mr. Gabisi and Mr. Yto submitted to Mr. Ocuarto a packing list, a commercial invoice, a bill of lading and a Sworn Import Duty Declaration which declared the shipment as children's toys, the taxes and duties of which were computed at P60,000.00. Mr. Ocuarto filed the aforementioned documents with the Manila International Container Port. However, before the shipment was released, a spot check was conducted by Customs Senior Agent James Bandido, who discovered that the contents of the van (shipment) were not children's toys as declared in the shipping documents but 1,000 units of video cassette recorders with taxes and duties computed at P600,000.00. A hold order and warrant of seizure and detention were then issued by the District Collector of Customs. Further investigation showed that Moonglow is non-existent. Consequently, Mr. Gabisi and Mr. Yto were charged with and convicted for violation of Section 3(e) of R.A. 3019 which makes it unlawful among others, for public officers to cause any undue Injury to any party, including the Government. In the discharge of official functions through manifest partiality, evident bad faith or gross inexcusable negligence. In their motion for reconsideration, the accused alleged that the decision was erroneous because the crime was not consummated but was only at an attempted stage, and that in fact the Government did not suffer any undue injury. a) Is the contention of both accused correct? Explain. (3%) b) Assuming that the attempted or frustrated stage of the violation charged is not punishable, may the accused be nevertheless convicted for an offense punished by the Revised Penal Code under the facts of the case? Explain. (3%)

SUGGESTED ANSWER:

Yes, the contention of the accused that the crime was not consummated is correct, RA. 3019 is a special law punishing acts mala prohibita. As a rule, attempted violation of a special law is not punished. Actual injury is required. Yes, both are liable for attempted estafa thru falsification of commercial documents, a complex crime.

...

Malum in Se vs. Malum Prohibitum (2005)

Distinguish malum in se from malum prohibitum. (2%)

SUGGESTED ANSWER:

In crimes malum in se, an act is by nature wrong, evil or bad, and so generally condemned. The moral trait of the offender is involved; thus, good faith or lack of criminal Intent on the part of the offender is a defense, unless the crime is the result of criminal negligence. Correspondingly, modifying circumstances are considered in punishing the offender.

In crimes mala prohibitum, an act is not by nature wrong, evil or bad. Yet, it is punished because there is a law prohibiting them for public good, and thus good faith or lack of criminal intent in doing the prohibited act is not a defense.

Motive vs. Intent (1996)

1 Distinguish intent from motive in Criminal Law.

2 May crime be committed without criminal intent?

SUGGESTED ANSWER:

1 Motive is the moving power which impels one to action for a definite result; whereas intent is the purpose to use a particular means to effect such results. Motive is not an essential element of a felony and need not be proved for purpose of conviction, while intent is an essential element of felonies by dolo.

2 Yes, a crime may be committed without criminal intent if such is a culpable felony, wherein Intent is substituted by negligence or imprudence, and also in a malum prohibitum or if an act is punishable by special law.

Motive vs. Intent (1999)

1 Distinguish "motive" from "intent".

2 When is motive relevant to prove a case? When is it not necessary to be established? Explain. (3%)

SUGGESTED ANSWER:

1 "Motive " is the moving power which impels a person to do an act for a definite result; while "intent" is the purpose for using a particular means to bring about a desired result. Motive is not an element of a crime but intent is an element of intentional crimes. Motive, if attending a crime, always precede the intent.

2 Motive is relevant to prove a case when there is doubt as to the identity of the offender or when the act committed gives rise to variant crimes and there is the need to determine the proper crime to be imputed to the offender.

It is not necessary to prove motive when the offender is positively identified or the criminal act did not give rise to variant crimes.

Motive vs. Intent (2004)

Distinguish clearly but briefly between intent and motive in the commission of an offense.

SUGGESTED ANSWER:

Intent is the purpose for using a particular means to achieve the desired result; while motive is the moving power which impels a person to act for a definite result. Intent is an ingredient of dolo or malice and thus an element of deliberate felonies; while motive is not an element of a crime but only considered when the identity of the offender is in doubt.

Motive; Proof thereof; Not Essential; Conviction (2006)

Motive is essential in the determination of the commission of a crime and the liabilities of the perpetrators. What are the instances where proof of motive is not essential or required to justify conviction of an accused? Give at least 3 instances. (5%)

SUGGESTED ANSWER:

1 When there is an eyewitness or positive identification of the accused.

2 When the accused admitted or confessed to the commission of the crime.

3 In crimes *mala prohibita*.

4 In direct assault, when the victim, who is a person in authority or agent of a person in authority was attacked in the actual performance of his duty (Art. 148, Revised Penal Code).

5 In crimes committed through reckless imprudence.

JUSTIFYING & EXEMPTING CIRCUMSTANCES

Exempting Circumstances; Coverage (2000)

A, brother of B, with the intention of having a night out with his friends, took the coconut shell which is being used by B as a bank for coins from inside their locked cabinet using their common key. Forthwith, A broke the coconut shell outside of their home in the presence of his friends.

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

Is A exempted from criminal liability under Article 332 of the Revised Penal Code for being a brother of B? Explain. (2%)

SUGGESTED ANSWER:

a) A is criminally liable for Robbery with force upon things.....

b) No, A is not exempt from criminal liability under Art. 332 because said Article applies only to theft, swindling or malicious mischief. Here, the crime committed is robbery.

Exempting Circumstances; Minority (1998)

John, an eight-year old boy, is fond of watching the television program "Zeo Rangers." One evening while he was engrossed watching his favorite television show, Petra, a maid changed the channel to enable her to watch "Home Along the Riles." This enraged John who got his father's revolver, and without warning, shot Petra at the back of her head causing her instantaneous death. Is John criminally liable? [2%]

SUGGESTED ANSWER:

No, John is not criminally liable for killing Petra because he is only 8 years old when he committed the killing. A minor below nine (9) years old is absolutely exempt from criminal liability although not from civil liability. (Art. 12, par. 2, RPC).

Exempting; Minority; 11 yrs Old; Absence of Discernment (2000)

While they were standing in line awaiting their vaccination at the school clinic, Pomping repeatedly pulled the ponytail of Katreena, his 11 years, 2 months and 13 days old classmate in Grade 5 at the Sampaloc Elementary School. Irritated, Katreena turned around and swung at Pomping with a ball pen. The top of the ball pen hit the right eye of Pomping which bled profusely. Realizing what she had caused. Katreena immediately helped Pomping. When investigated, she freely admitted to the school principal that she was responsible for the injury to Pomping's eye. After the incident, she executed a statement admitting her culpability. Due to the injury. Pomping lost his right eye. a) Is Katreena criminally liable? Why? (3%) b) Discuss the attendant circumstances and effects thereof. (2%)

SUGGESTED ANSWER:

a) No, Katreena is not criminally liable although she is civilly liable. Being a minor less than fifteen (15) years old although over nine (9) years of age, she is generally exempt from criminal liability. The exception is where the prosecution proved that the act was committed with discernment. The burden is upon the prosecution to prove that the accused acted with discernment.

The presumption is that such minor acted without discernment, and this is strengthened by the fact that Katreena only reacted with a ballpen which she must be using in class at the time, and only to stop Pomping's vexatious act of repeatedly pulling her ponytail. In other words, the injury was accidental.

b) The attendant circumstances which may be considered are:

1 Minority of the accused as an exempting circumstance under Article 12. paragraph 3, Rev. Penal Code, where she shall be exempt from criminal liability, unless it was proved that she acted with discernment. **She is however civilly liable**;

2 If found criminally liable, the minority of the accused as a privileged mitigating circumstance. A discretionary penalty lower by at least two (2)

degrees than that prescribed for the crime committed shall be imposed in accordance with Article 68. paragraph 1, Rev. Penal Code. The sentence, however, should automatically be suspended in accordance with Section 5(a) of Rep. Act No. 8369 otherwise known as the "Family Courts Act of 1997";

1 Also if found criminally liable, the ordinary mitigating circumstance of not Intending to commit so grave a wrong as that committed, under Article 13, paragraph 3, Rev. Penal Code; and
2 The ordinary mitigating circumstance of sufficient provocation on the part of the offended party immediately preceded the act.

Justifying vs. Exempting Circumstances (2004)
Distinguish clearly but briefly: Between justifying and exempting circumstances in criminal law.
SUGGESTED ANSWER:
Justifying circumstance affects the act, not the actor; while exempting circumstance affects the actor, not the act. In justifying circumstance, no criminal and, generally, no civil liability is incurred; while in exempting circumstance, civil liability is generally incurred although there is no criminal liability.

Justifying vs. Exempting Circumstances (1998) Distinguish between justifying and exempting circumstances. [3%]

SUGGESTED ANSWER:
1. In **Justifying Circumstances**:
The circumstance affects the act, not the actor;
The act is done within legal bounds, hence considered as not a crime;
Since the act is not a crime, there is no criminal;
There being no crime nor criminal, there is no criminal nor civil liability. Whereas, in an
Exempting Circumstances:
The circumstance affects the actor, not the act;
The act is felonious and hence a crime but the actor acted without voluntariness;
Although there is a crime, there is no criminal because the actor is regarded only as an instrument of the crime;
There being a wrong done but no criminal.

Justifying; Defense of Honor; Requisites (2002)
When A arrived home, he found B raping his daughter. Upon seeing A, B ran away. A took his gun and shot B, killing him. Charged with homicide, A claimed he acted in defense of his daughter's honor. Is A correct? If not, can A claim the benefit of any mitigating circumstance or circumstances? (3%)
SUGGESTED ANSWER:
No, A cannot validly invoke defense of his daughter's honor in having killed B since the rape was already consummated; moreover, B already ran away, hence, there was no aggression to defend against and no defense to speak of.
A may, however, invoke the benefit of the mitigating circumstance of having acted in immediate vindication of a grave offense to a descendant, his daughter, under par. 5, Article 13 of the Revised Penal Code, as amended.

Justifying; Defense of Stranger (2002)
A chanced upon three men who were attacking B with fist blows. C, one of the men, was about to stab B with a knife. Not knowing that B was actually the aggressor because he had earlier challenged the three men to a fight, A shot C as the latter was about to stab B. May A invoke the defense of a stranger as a justifying circumstance in his favor? Why? (2%)
SUGGESTED ANSWER:
Yes. A may invoke the justifying circumstance of defense of stranger since he was not involved in the fight and he shot C when the latter was about to stab B. There being no indication that A was induced by revenge, resentment or any other evil motive in shooting C, his act is justified under par 3, Article 11 of the Revised Penal Code, as amended.

Justifying; Fulfillment of Duty; Requisites (2000)
Lucresia, a store owner, was robbed of her bracelet in her home. The following day, at about 5 o'clock in the afternoon, a neighbor, 22-year old Jun-Jun, who had an unsavory reputation, came to her store to buy bottles of beer. Lucresia noticed her bracelet wound around the right arm of Jun-Jun. As soon as the latter left, Lucresia went to a nearby police station and sought the help of a policeman on duty, Pat. Willie Reyes. He went with Lucresia to the house of Jun-Jun to confront the latter. Pat. Reyes introduced himself as a policeman and tried to get hold of Jun-Jun who resisted and ran away. Pat. Reyes chased him and fired two warning shots in the air. Jun-Jun continued to run and when he was about 7 meters away, Pat, Reyes shot him in the right leg. Jun-Jun was hit and he fell down but he crawled towards a fence, intending to pass through an opening underneath. When Pat. Reyes was about 5 meters away, he fired another shot at Jun-Jun hitting him at the right lower hip. Pat. Reyes brought Jun-Jun to the hospital, but because of profuse bleeding, he eventually died. Pat Reyes was subsequently charged with homicide. During the trial, Pat Reyes raised the defense, by way of exoneration, that he acted in the fulfillment of a duty. Is the defense tenable? Explain. (3%)
SUGGESTED ANSWER:
No, the defense of Pat. Reyes is not tenable. The defense of having acted in the fulfillment of a duty requires as a condition, inter alia, that the injury or offense committed be the unavoidable or necessary consequence of the due performance of the duty *(People vs. Oanis, et.al., 74 Phil. 257)*. It is not enough that the accused acted in fulfillment of a duty.

After Jun-Jun was shot in the right leg and was already crawling, there was no need for Pat, Reyes to shoot him further. Clearly, Pat. Reyes acted beyond the call of duty which brought about the cause of death of the victim.

Justifying; SD; Defense of Honor; Requisites (1998)

One night, Una, a young married woman, was sound asleep in her bedroom when she felt a man on top of her. Thinking it was her husband Tito, who came home a day early from his business trip, Una let him have sex with her. After the act, the man said, "I hope you enjoyed it as much as I did." Not recognizing the voice, it dawned upon Lina that the man was not Tito, her husband. Furious, Una took out Tito's gun and shot the man. Charged with homicide Una denies culpability on the ground of defense of honor. Is her claim tenable? [5%]

SUGGESTED ANSWER:

No, Una's claim that she acted in defense of honor, is not tenable because the unlawful aggression on her honor had already ceased. Defense of honor as included in self-defense, must have been done to prevent or repel an unlawful aggression. There is no defense to speak of where the unlawful aggression no longer exists.

Justifying; Defense of Honor; Elements (2000)

Osang, a married woman in her early twenties, was sleeping on a banig on the floor of their nipa hut beside the seashore when she was awakened by the act of a man mounting her. Thinking that it was her husband, Gardo,who had returned from fishing in the sea, Osang continued her sleep but allowed the man, who was actually their neighbor, Julio, to have sexual intercourse with her. After Julio satisfied himself, he said "Salamat Osang" as he turned to leave. Only then did Osang realize that the man was not her husband. Enraged, Osang grabbed a balisong from the wall and stabbed Julio to death. When tried for homicide, Osang claimed defense of honor. Should the claim be sustained? Why? (5%)

SUGGESTED ANSWER:

No, Osang"s claim of defense of honor should not be sustained because the aggression on her honor had ceased when she stabbed the aggressor. In defense of rights under paragraph 1, Art. 11 of the RPC, It is required inter alia that there be (1) unlawful aggression, and (2) reasonable necessity of the means employed to prevent or repel it. The unlawful aggression must be continuing when the aggressor was injured or disabled by the person making a defense.

But if the aggression that was begun by the injured or disabled party already ceased to exist when the accused attacked him, as in the case at bar, the attack made is a retaliation, and not a defense. Paragraph 1, Article 11 of the Code does not govern.

Hence, Osang's act of stabbing Julio to death after the sexual intercourse was finished, is not defense of honor but an immediate vindication of a grave offense committed against her, which is only mitigating.

Justifying; SD; Defense of Property; Requisites (1996)

A security guard, upon seeing a man scale the wall of a factory compound which he was guarding, shot and killed the latter. Upon investigation by the police who thereafter arrived at the scene of the shooting, it was discovered that the victim was unarmed. When prosecuted for homicide, the security guard claimed that he merely acted in self-defense of property and in the performance of his duty as a security guard. If you were the judge, would you convict him of homicide? Explain.

SUGGESTED ANSWER:

Yes. I would convict the security guard for Homicide if I were the Judge, because his claim of having acted in defense of property and in performance of a duty cannot fully be justified. Even assuming that the victim was scaling the wall of the factory compound to commit a crime inside the same, shooting him is never justifiable, even admitting that such act is considered unlawful aggression on property rights. In *People vs. Narvaes, 121 SCRA 329*, a person is justified to defend his property rights, but all the elements of self-defense under Art. 11, must be present. In the instant case, just like in Narvaes, the second element (reasonable necessity of the means employed) is absent. Hence, he should be convicted of homicide but entitled to incomplete self-defense.

Justifying; SD; Defense of Property; Requisites (2003)

The accused lived with his family in a neighborhood that often was the scene of frequent robberies. At one time, past midnight, the accused went downstairs with a loaded gun to investigate what he thought were footsteps of an uninvited guest. After seeing what appeared to him an armed stranger looking around and out to rob the house, he fired his gun seriously injuring the man. When the lights were turned on, the unfortunate victim turned out to be a brother-in-law on his way to the kitchen to get some light snacks. The accused was indicted for serious physical injuries. Should the accused, given the circumstances, be convicted or acquitted? Why? 4%

SUGGESTED ANSWER:

The accused should be convicted because, even assuming the facts to be true in his belief, his act of shooting a burglar when there is no unlawful aggression on his person is not justified. Defense of property or property right does not justify the act of firing a gun at a burglar unless the life and limb of the accused is already in imminent and immediate danger. Although the accused acted out of a misapprehension of the facts, he is not absolved from criminal liability.

ALTERNATIVE ANSWER:

Considering the given circumstances, namely; the frequent robberies in the neighborhood, the time was past midnight, and the victim appeared to be an armed burglar in the dark and inside his house, the accused could have entertained an honest belief that his life and limb or those of his family are already in immediate and imminent danger. Hence, it may be reasonable to accept that he acted out of an honest mistake of fact and therefore without criminal intent. An honest mistake of fact negatives criminal intent and thus absolves the accused from criminal liability.

Qualifying; Elements of a Crime (2003)

When would qualifying circumstances be deemed, if at all, elements of a crime? 4%

SUGGESTED ANSWER:

A qualifying circumstance would be deemed an element of a crime when -

it changes the nature of the crime, bringing about a more serious crime and a heavier penalty;

it is essential to the crime involved, otherwise some other crime is committed; and

it is specifically alleged in the Information and proven during the trial.

ALTERNATIVE ANSWER:

A qualifying circumstance is deemed an element of a crime when it is specifically stated by law as included in the definition of a crime, like treachery in the crime of murder.

MITIGATING CIRCUMSTANCES

Mitigating; Non-Intoxication (2000)

Despite the massive advertising campaign in media against firecrackers and gun-firing during the New Year's celebrations, Jonas and Jaja bought ten boxes of super lolo and pla-pla in Bocaue, Bulacan. Before midnight of December 31, 1999, Jonas and Jaja started their celebration by having a drinking spree at Jona's place by exploding their high-powered firecrackers in their neighborhood. In the course of their conversation, Jonas confided to Jaja that he has been keeping a long-time grudge against his neighbor Jepoy in view of the latter's refusal to lend him some money. While under the influence of liquor, Jonas started throwing lighted super lolos inside Jepoy's fence to irritate him and the same exploded inside the latter's yard. Upon knowing that the throwing of the super lolo was deliberate, Jepoy became furious and sternly warned Jonas to stop his malicious act or he would get what he wanted. A heated argument between Jonas and Jepoy ensued but Jaja tried to calm down his friend. At midnight, Jonas convinced Jaja to lend him his .45 caliber pistol so that he could use it to knock down Jepoy and to end his arrogance. Jonas thought that after all, explosions were everywhere and nobody would know who shot Jepoy. After Jaja lent his firearm to Jonas, the latter again started started throwing lighted super lolos and pla-plas at Jepoy's yard in order to provoke him so that he would come out of his house. When Jepoy came out, Jonas immediately shot him with Jaja's .45 caliber gun but missed his target. Instead, the bullet hit Jepoy's five year old son who was following behind him, killing the boy instantaneously, a) What crime or crimes can Jonas and Jaja be charged with? Explain. (2%) b) If you were Jonas' and Jaja's lawyer, what possible defenses would you set up in favor of your clients? Explain. (2%) c) If you were the Judge, how would you decide the case? Explain. (1%)

SUGGESTED ANSWER:

a) Jonas and Jaja, can be charged with the complex crime of attempted murder with homicide because a single act caused a less grave and a grave felony (Art. 48. RPC)....

b) If I were Jonas' and Jaja's lawyer, I will use the following defenses:

That the accused had no intention to commit so grave a wrong as that committed as they merely intended to frighten Jepoy;

That Jonas committed the crime in a state of intoxication thereby impairing his will power or capacity to understand the wrongfulness of his act. Non-intentional intoxication is a mitigating circumstance *(People us. Fortich, 281 SCRA 600 (1997); Art. 15, RPC.).*

Mitigating; Plea of Guilty (1999)

An accused charged with the crime of homicide pleaded "not guilty" during the preliminary investigation before the Municipal Court. Upon the elevation of the case to the Regional Trial Court the Court of competent jurisdiction, he pleaded guilty freely and voluntarily upon arraignment. Can his plea of guilty before the RTC be considered spontaneous and thus entitle him to the mitigating circumstance of spontaneous plea of guilty under Art. 13(7), RPC? (3%)

SUGGESTED ANSWER:

Yes, his plea of guilty before the Regional Trial Court can be considered spontaneous, for which he is entitled to the mitigating circumstance of plea of guilty. His plea of not guilty before the Municipal Court is immaterial as it was made during preliminary investigation only and before a court not competent to render judgment.

Mitigating; Plea of Guilty; Requisites (1999)

In order that the plea of guilty may be mitigating, what requisites must be complied with? (2%)

SUGGESTED ANSWER:

For plea of guilty to be mitigating, the requisites are:

That the accused spontaneously pleaded guilty to the crime charged;

That such plea was made before the court competent to try the case and render judgment; and

That such plea was made prior to the presentation of evidence for the prosecution.

Mitigating; Plea of Guilty; Voluntary Surrender (1997) After killing the victim, the accused absconded. He succeeded in eluding the police until he surfaced and surrendered to the authorities about two years later. Charged with murder, he pleaded not guilty but, after the prosecution had presented two witnesses implicating him to the crime, he changed his plea to that of guilty. Should the mitigating circumstances of voluntary surrender and plea of guilty be considered in favor of the accused?

SUGGESTED ANSWER:

Voluntary surrender should be considered as a mitigating circumstance. After two years, the police were still unaware of the whereabouts of the accused and the latter

could have continued to elude arrest. Accordingly, the surrender of the accused should be considered mitigating because it was done spontaneously, indicative of the remorse or repentance on the part of said accused and therefore, by his surrender, the accused saved the Government expenses, efforts, and time.

ALTERNATIVE ANSWER:

Voluntary surrender may not be appreciated in favor of the accused. Two years is too long a time to consider the surrender as spontaneous *(People us. Ablao, 183 SCRA 658)*. For sure the government had already incurred considerable efforts and expenses in looking for the accused.

Plea of guilty can no longer be appreciated as a mitigating circumstance because the prosecution had already started with the presentation of its evidence (Art. 13, par. 7. Revised Penal Code).

Mitigating; Voluntary Surrender (1996)

Hilario, upon seeing his son engaged in a scuffle with Rene, stabbed and killed the latter. After the stabbing, he brought his son home. The Chief of Police of the town, accompanied by several policemen, went to Hilario's house, Hilario, upon seeing the approaching policemen, came down from his house to meet them and voluntarily went with them to the Police Station to be investigated in connection with the killing. When eventually charged with and convicted of homicide, Hilario, on appeal, faulted the trial court for not appreciating in his favor the mitigating circumstance of voluntary surrender. Is he entitled to such a mitigating circumstance? Explain.

SUGGESTED ANSWER:

Yes, Hilario is entitled to the mitigating circumstance of voluntary surrender. The crux of the issue is whether the fact that Hilario went home after the incident, but came down and met the police officers and went with them is considered "Voluntary surrender," The voluntariness of surrender is tested if the same is spontaneous showing the intent of the accused to submit himself unconditionally to the authorities. This must be either (a) because he acknowledges his guilt, or (b) because he wishes to save them the trouble and expenses necessarily incurred in his search and capture. *(Reyes' Commentaries, p. 303)*. Thus, the act of the accused in hiding after commission of the crime, but voluntarily went with the policemen who had gone to his hiding place to investigate, was held to be mitigating circumstance.(*People vs. Dayrit, cited in Reyes' Commentaries, p. 299)*

Mitigating; Voluntary Surrender; Elements (1999)

When is surrender by an accused considered voluntary, and constitutive of the mitigating circumstance of voluntary surrender? (3%)

SUGGESTED ANSWER:

A surrender by an offender is considered voluntary when it is spontaneous, indicative of an intent to submit unconditionally to the authorities.

To be mitigating, the surrender must be:

spontaneous, i.e., indicative of acknowledgment of guilt and not for convenience nor conditional;

made before the government incurs expenses, time and effort in tracking down the offender's whereabouts; and

made to a person in authority or the latter's agents.

AGGRAVATING CIRCUMSTANCES

Aggravating Circumstances (1996)

Jose, Domingo, Manolo, and Fernando, armed with bolos, at about one o'clock in the morning, robbed a house at a desolate place where Danilo, his wife, and three daughters were living. While the four were in the process of ransacking Danilo's house, Fernando, noticing that one of Danilo's daughters was trying to get away, ran after her and finally caught up with her in a thicket somewhat distant from the house. Fernando, before bringing back the daughter to the house, raped her first. Thereafter, the four carted away the belongings of Danilo and his family.

What crime did Jose, Domingo, Manolo and Fernando commit? Explain.

Suppose, after the robbery, the four took turns in raping the three daughters of Danilo inside the latter's house, but before they left, they killed the whole family to prevent identification, what crime did the four commit? Explain.

Under the facts of the case, what aggravating circumstances may be appreciated against the four? Explain.

SUGGESTED ANSWER:

a) Jose, Domingo, and Manolo committed Robbery, while Fernando committed complex crime of Robbery with Rape...

b) The crime would be Robbery with Homicide because the killings were by reason (to prevent identification) and on the occasion of the robbery. The multiple rapes committed and the fact that several persons were killed [homicide), would be considered as aggravating circumstances. The rapes are synonymous with Ignominy and the additional killing synonymous with cruelty, *(People vs. Solis, 182 SCRA; People vs. Plaga, 202 SCRA 531)*

c) The aggravating circumstances which may be considered in the premises are:

1 Band because all the four offenders are armed;

2 Noctumity because evidently the offenders took advantage of nighttime;

3 dwelling; and

4 Uninhabited place because the house where the crimes were committed was "at a desolate place" and obviously the offenders took advantage of this circumstance in committing the crime.

Aggravating Circumstances; Generis vs. Qualifying (1999)

Distinguish generic aggravating circumstance from qualifying aggravating circumstance.

SUGGESTED ANSWER:

Generic Aggravating Circumstances:

affects only the imposition of the penalty prescribed, but not the nature of the crime committed;

can be offset by ordinary mitigating circumstances;

need not be alleged in the Information as long as proven during the trial, the same shall be considered in imposing the sentence.

Qualifying Aggravating Circumstances:

must be alleged in the Information and proven during trial;

cannot be offset by mitigating circumstances;

affects the nature of the crime or brings about a penalty higher in degree than that ordinarily prescribed.

Aggravating Circumstances; Kinds & Penalties (1999)

Name the four (4) kinds of aggravating circumstances and state their effect on the penalty of crimes and nature thereof. (3%)

SUGGESTED ANSWER:

The four (4) kinds of aggravating circumstances are:

1) GENERIC AGGRAVATING or those that can generally apply to all crimes, and can be offset by mitigating circumstances, but if not offset, would affect only the maximum of the penalty prescribed by law;

2) SPECIFIC AGGRAVATING or those that apply only to particular crimes and cannot be offset by mitigating circumstances:

3) QUALIFYING CIRCUMSTANCES or those that change the nature of the crime to a graver one, or brings about a penalty next higher in degree, and cannot be offset by mitigating circumstances;

4) INHERENT AGGRAVATING or those that essentially accompany the commission of the crime and does not affect the penalty whatsoever.

Aggravating; Cruelty; Relationship (1994)

Ben, a widower, driven by bestial desire, poked a gun on his daughter Zeny, forcibly undressed her and tied her legs to the bed. He also burned her face with a lighted cigarrete. Like a madman, he laughed while raping her. What aggravating circumstances are present in this case?

SUGGESTED ANSWER:

a) Cruelty, for burning the victim's face with a lighted cigarrete, thereby deliberately augmenting the victim's suffering by acts clearly unnecessary to the rape, while the offender delighted and enjoyed seeing the victim suffer in pain *(People vs. Lucas, 181 SCRA 316).*

b) Relationship, because the offended party is a descendant (daughter) of the offender and considering that the crime is one against chastity.

Aggravating; Must be alleged in the information (2000)

Rico, a member of the Alpha Rho fraternity, was killed by Pocholo, a member of the rival group, Sigma Phi Omega. Pocholo was prosecuted for homicide before the Regional Trial Court in Binan, Laguna. During the trial, the prosecution was able to prove that the killing was committed by means of poison in consideration of a promise or reward and with cruelty. If you were the Judge, with what crime will you convict Pocholo? Explain. (2%)

SUGGESTED ANSWER:

Pocholo should be convicted of the crime of homicide only because the aggravating circumstances which should qualify the crime to murder were not alleged in the Information.

The circumstances of using poison, in consideration of a promise or reward, and cruelty which attended the killing of Rico could only be appreciated as generic aggravating circumstances since none of them have been alleged in the information to qualify the killing to murder. A qualifying circumstance must be alleged in the Information and proven beyond reasonable doubt during the trial to be appreciated as such.

Aggravating; Nighttime; Band (1994)

At about 9:30 in the evening, while Dino and Raffy were walking along Padre Faura Street, Manila. Johnny hit them with a rock injuring Dino at the back. Raffy approached Dino, but suddenly, Bobby, Steve, Danny and Nonoy surrounded the duo. Then Bobby stabbed Dino. Steve, Danny, Nonoy and Johnny kept on hitting Dino and Raffy with rocks. As a result. Dino died, Bobby, Steve, Danny, Nonoy and Johnny were charged with homicide. Can the court appreciate the aggravating circumstances of nighttime and band?

SUGGESTED ANSWER:

No, nighttime cannot be appreciated as an aggravating circumstance because there is no indication that the offenders deliberately sought the cover of darkness to facilitate the commission of the crime or that they took advantage of nighttime *(People vs. De los Reyes, 203 SCRA 707).* Besides, judicial notice can be taken of the fact that Padre Faura Street is well-lighted.

However, band should be considered as the crime was committed by more than three armed malefactors; in a recent Supreme Court decision, stones or rocks are considered deadly weapons.

Aggravating; Recidivism (2001)

Juan de Castro already had three (3) previous convictions by final judgment for theft when he was found guilty of Robbery with Homicide. In the last case, the trial Judge considered against the accused both recidivism and habitual delinquency. The accused appealed and contended that in his last conviction, the trial court cannot consider against him a finding of recidivism and,

again, of habitual delinquency. Is the appeal meritorious? Explain. (5%)

SUGGESTED ANSWER:

No, the appeal is not meritorious. Recidivism and habitual delinquency are correctly considered in this case because the basis of recidivism is different from that of habitual delinquency.

Juan is a recidivist because he had been previously convicted by final judgment for theft and again found guilty for Robbery with Homicide, which are both crimes against property, embraced under the same Title (Title Ten, Book Two] of the Revised Penal Code. The implication is that he is specializing in the commission of crimes against property, hence aggravating in the conviction for Robbery with Homicide.

Habitual delinquency, which brings about an additional penalty when an offender is convicted a third time or more for specified crimes, is correctly considered ...

Aggravating; Recidivism vs. Quasi-Recidivism (1998)

Distinguish between recidivism and quasi-recidivism. [2%]

SUGGESTED ANSWER:

In **recidivism** -

1 The convictions of the offender are for crimes embraced in the same Title of the Revised Penal Code; and

2 This circumstance is generic aggravating and therefore can be effect by an ordinary mitigating circumstance.

Whereas in **quasi-recidivlsm** -

1 The convictions are not for crimes embraced in the same Title of the Revised Penal Code, provided that it is a felony that was committed by the offender before serving sentence by final judgment for another crime or while serving sentence for another crime; and

2 This circumstance is a special aggravating circumstance which cannot be offset by any mitigating circumstance.

Aggravating; Treachery & Unlawful Entry (1997)

The accused and the victim occupied adjacent apartments, each being a separate dwelling unit of one big house. The accused suspected his wife of having an illicit relation with the victim. One afternoon, he saw the victim and his wife together on board a vehicle. In the evening of that day, the accused went to bed early and tried to sleep, but being so annoyed over the suspected relation between his wife and the victim, he could not sleep. Later in the night, he resolved to kill victim. He rose from bed and took hold of a knife. He entered the apartment of the victim through an unlocked window. Inside, he saw the victim soundly asleep. He thereupon stabbed the victim, inflicting several wounds, which caused his death within a few hours.

Would you say that the killing was attended by the qualifying or aggravating circumstances of evident premeditation, treachery, nighttime and unlawful entry?

SUGGESTED ANSWER:

1. Evident premeditation cannot be considered against the accused because he resolved to kill the victim "later in the night" and there was no sufficient lapse of time between the determination and execution, to allow his conscience to overcome the resolution of his will.

2. TREACHERY may be present because the accused stabbed the victim while the latter was sound asleep. Accordingly, he employed means and methods which directly and specially insured the execution of the act without risk himself arising from the defense which the victim might have made *(People vs. Dequina. 60 Phil. 279 People vs. Miranda, et at. 90 Phil. 91).*

3. Nighttime cannot be appreciated because there is no showing that the accused deliberately sought or availed of nighttime to insure the success of his act. The Intention to commit the crime was conceived shortly before its commission *(People vs Pardo. 79 Phil, 568).* Moreover, nighttime is absorbed in treachery.

4. UNLAWFUL ENTRY may be appreciated as an aggravating circumstance, inasmuch as the accused entered the room of the victim through the window, which is not the proper place for entrance into the house (*Art. 14. par. 18. Revised Penal Code, People vs. Baruga 61 Phil. 318).*

ALTERNATIVE CIRCUMSTANCES

Alternative Circumstances; Intoxication (2002)

A was invited to a drinking spree by friends. After having had a drink too many, A and B had a heated argument, during which A stabbed B. As a result, B suffered serious physical injuries. May the intoxication of A be considered aggravating or mitigating? (5%)

SUGGESTED ANSWER:

The intoxication of A may be prima facie considered mitigating since it was merely incidental to the commission of the crime. It may not be considered aggravating as there is no clear indication from the facts of the case that it was habitual or intentional on the part of A. Aggravating circumstances are not to be presumed; they should be proved beyond reasonable doubt

PERSONS Criminally Liable for FELONIES

Anti-Fencing Law; Fencing (1996)

Flora, who was engaged in the purchase and sale of jewelry, was prosecuted for the violation of P.D. 1612, otherwise known as the Anti-Fencing Law, for having been found to be in possession of recently stolen Jewelry valued at P100,000.00 at her jewelry shop at Zapote

Road, Las Pinas, Metro Manila. She testified during the trial that she merely bought the same from one named Cecilino and even produced a receipt covering the sale. Cecilino, in the past, used to deliver to her jewelries for sale but is presently nowhere to be found. Convicted by the trial court for violation of the Anti-Fencing Law, she argued (or her acquittal on appeal, contending that the prosecution failed to prove that she knew or should have known that the Jewelries recovered from her were the proceeds of the crime of robbery or theft.

SUGGESTED ANSWER:

No, Flora's defense is not well-taken because mere possession of any article of value which has been the subject of theft or robbery shall be prima facie evidence of fencing (P.D.No. 1612). The burden is upon the accused to prove that she acquired the jewelry legitimately. Her defense of having bought the Jewelry from someone whose whereabouts is unknown, does not overcome the presumption of fencing against her *(Pamintuan vs People, G.R 111426, 11 July 1994).* Buying personal property puts the buyer on caveat because of the phrases that he should have known or ought to know that it is the proceed from robbery or theft. Besides, she should have followed the administrative procedure under the decree that of getting a clearance from the authorities in case the dealer is unlicensed in order to escape liability.

Anti-Fencing Law; Fencing vs. Theft or Robbery (1995)

What is the difference between a fence and an accessory to theft or robbery? Explain. Is there any similarity between them?

SUGGESTED ANSWER:

One difference between a fence and an accessory to theft or robbery is the penalty involved; a fence is punished as a principal under P.D. No. 1612 and the penalty is higher, whereas an accessory to robbery or theft under the Revised Penal Code is punished two degrees lower than the principal, unless he bought or profited from the proceeds of theft or robbery arising from robbery in Philippine highways under P.D. No. 532 where he is punished as an accomplice, hence the penalty is one degree lower.

Also, fencing is a malum prohibitum and therefore there is no need to prove criminal intent of the accused; this is not so in violations of Revised Penal Code.

SUGGESTED ANSWER:

Yes, there is a similarity in the sense that all the acts of one who is an accessory to the crimes of robbery or theft are included in the acts defined as fencing. In fact, the accessory in the crimes of robbery or theft could be prosecuted as such under the Revised Penal Code or as a fence under P.D. No. 1612. *(Dizon-Pamintuan vs. People, 234 SCRA 63]*

Anti-Fencing Law; Fencing; Elements (1995)

What are the elements of fencing?

SUGGESTED ANSWER:

The elements of fencing are:

a. a crime of robbery or theft has been committed;

accused, who is not a principal or accomplice in the crime, buys, receives, possesses, keeps, acquires, conceals, or disposes, or buys and sells, or in any manner deals in any article, item , object or anything of value, which has been derived from the proceeds of said crime;

the accused knows or should have known that said article, item, object or anything of value has been derived from the from the proceeds of the crime of robbery or theft; and

there is on the part of the accused, intent to gain for himself or for another.

Criminal Liability; Accessories & Fence (1998)

King went to the house of Laura who was alone. Laura offered him a drink and after consuming three bottles of beer. King made advances to her and with force and violence, ravished her. Then King killed Laura and took her jewelry.

Doming, King's adopted brother, learned about the incident. He went to Laura's house, hid her body, cleaned everything and washed the bloodstains inside the room.

Later, King gave Jose, his legitimate brother, one piece of jewelry belonging to Laura. Jose knew that the jewelry was taken from Laura but nonetheless he sold it for P2,000.

What crime or crimes did King, Doming and Jose commit? Discuss their criminal liabilities. [10%]

SUGGESTED ANSWER:

King committed the composite crime of Rape with homicide as a single indivisible offense, not a complex crime, and Theft. ...

Doming's acts, having been done with knowledge of the commission of the crime and obviously to conceal the body of the crime to prevent its discovery, makes him an accessory to the crime of rape with homicide under Art. 19, par. 2 of the Rev. Penal Code, but he is exempt from criminal liability therefor under Article 20 of the Code, being an adopted brother of the principal.

Jose incurs criminal liability either as an accessory to the crime of theft committed by King, or as fence. Although he is a legitimate brother of King, the exemption under Article 20 does not include the participation he did, because he profited from the effects of such theft by selling the jewelry knowing that the same was taken from Laura. Or Jose may be prosecuted for fencing under the Anti-Fencing Law of 1979 (PD No. 1612) since the jewelry was the proceeds of theft and with intent to gain, he received it from King and sold it.

Criminal Liability; Non-Exemption as Accessory (2004)

DCB, the daughter of MCB, stole the earrings of XYZ, a stranger. MCB pawned the earrings with TBI Pawnshop as a pledge for P500 loan. During the trial, MCB raised the defense that being the mother of DCB, she cannot be

held liable as an accessory. Will MCB's defense prosper? Reason briefly. (5%)

SUGGESTED ANSWER:

No, MCB's defense will not prosper because the exemption from criminal liability of an accessory by virtue of relationship with the principal does not cover accessories who themselves profited from or assisted the offender to profit by the effects or proceeds of the crime. This non-exemption of an accessory, though related to the principal of the crime, is expressly provided in Art. 20 of the Revised Penal Code.

Criminal Liability; Principal by Direct Participation; Co-Principal by Indispensable Cooperation (2000) Despite the massive advertising campaign in media against firecrackers and gun-firing during the New Year's celebrations, Jonas and Jaja bought ten boxes of super lolo and pla-pla in Bocaue, Bulacan. Before midnight of December 31, 1999, Jonas and Jaja started their celebration by having a drinking spree at Jona's place by exploding their high-powered firecrackers in their neighborhood. In the course of their conversation, Jonas confided to Jaja that he has been keeping a long-time grudge against his neighbor Jepoy in view of the latter's refusal to lend him some money. While under the influence of liquor, Jonas started throwing lighted super lolos inside Jepoy's fence to irritate him and the same exploded inside the latter's yard. Upon knowing that the throwing of the super lolo was deliberate, Jepoy became furious and sternly warned Jonas to stop his malicious act or he would get what he wanted. A heated argument between Jonas and Jepoy ensued but Jaja tried to calm down his friend. At midnight, Jonas convinced Jaja to lend him his .45 caliber pistol so that he could use it to knock down Jepoy and to end his arrogance. Jonas thought that after all, explosions were everywhere and nobody would know who shot Jepoy. After Jaja lent his firearm to Jonas, the latter again started started throwing lighted super lolos and pla-plas at Jepoy's yard in order to provoke him so that he would come out of his house. When Jepoy came out, Jonas immediately shot him with Jaja's .45 caliber gun but missed his target. Instead, the bullet hit Jepoy's five year old son who was following behind him, killing the boy instantaneously, If you were the Judge, how would you decide the case? Explain. (1%)

SUGGESTED ANSWER:

I would convict Jonas as principal by direct participation and Jaja as co-principal by Indispensable cooperation for the complex crime of murder with homicide. Jaja should be held liable as co-principal and not only as an accomplice because he knew of Jonas' criminal design even before he lent his firearm to Jonas and still he concurred in that criminal design by providing the firearm.

Criminal Liability; Principal by Inducement (2002)

A asked B to kill C because of a grave injustice done to A by C. A promised B a reward. B was willing to kill C, not so much because of the reward promised to him but because he also had his own long-standing grudge against C, who had wronged him in the past. If C is killed by B, would A be liable as a principal by inducement? (5%)

SUGGESTED ANSWER:

No. A would not be liable as a principal by inducement because the reward he promised B is not the sole impelling reason which made B to kill C. To bring about criminal liability of a co-principal, the inducement made by the inducer must be the sole consideration which caused the person induced to commit the crime and without which the crime would not have been committed. The facts of the case indicate that B, the killer supposedly induced by A, had his own reason to kill C out of a long standing grudge.

Criminal Liability; Principal; Inducement & Participation (1994)

Tata owns a three-storey building located at No. 3 Herran Street. Paco, Manila. She wanted to construct a new building but had no money to finance the construction. So, she insured the building for P3,000,000.00. She then urged Yoboy and Yongsi, for monetary consideration, to burn her building so she could collect the insurance proceeds. Yoboy and Yongsi burned the said building resulting to its total loss. What is their respective criminal liability?

SUGGESTED ANSWER:

Tata is a principal by inducement because she directly induced Yoboy and Yongsi, for a price or monetary consideration, to commit arson which the latter would not have committed were it not for such reason. Yoboy and Yongsi are principals by direct participation *(Art. 17, pars. 21 and 3, RPC).*

Destructive Arson (1994)

Tata owns a three-storey building located at No. 3 Herran Street. Paco, Manila. She wanted to construct a new building but had no money to finance the construction. So, she insured the building for P3,000,000.00. She then urged Yoboy and Yongsi, for monetary consideration, to burn her building so she could collect the insurance proceeds. Yoboy and Yongsi burned the said building resulting to its total loss. What crime did Tata, Yoboy and Yongsi commit?

SUGGESTED ANSWER:

Tata, Yoboy and Yongsi committed the crime of destructive arson because they collectively caused the destruction of property by means of fire under the circumstances which exposed to danger the life or property of others *(Art, 320, par. 5, RPC. as amended by RA No. 7659).*

PENALTIES

Complex Crime vs. Compound Crime (2004) Distinguish clearly but briefly: Between compound and complex crimes as concepts in the Penal Code.

SUGGESTED ANSWER:

COMPOUND CRIMES result when the offender committed only a single felonious act from which two or

more crimes resulted. This is provided for in modified form in the first part of Article 48, Revised Penal Code, limiting the resulting crimes to only grave and/or less grave felonies. Hence, light felonies are excluded even though resulting from the same single act.

COMPLEX CRIMES result when the offender has to commit an offense as a necessary means for committing another offense. Only one information shall be filed and if proven, the penalty for the more serious crime shall be imposed.

Complex Crime vs. Special Complex Crime vs. Delito Continuado (2005)

Distinguish the following from each other:

SUGGESTED ANSWER:

An ORDINARY COMPLEX CRIME is made up of two or more crimes being punished in distinct provisions of the Revised Penal Code but alleged in one information either because they were brought about by a single felonious act or because one offense is a necessary means for committing the other offense or offenses. They are alleged in one information so that only one penalty shall be imposed. As to penalties, ordinary complex crime, the penalty for the most serious crime shall be imposed and in its maximum period

A SPECIAL COMPLEX CRIME, on the other hand, is made up of two or more crimes which are considered only as components of a single indivisible offense being punished in one provision of the Revised Penal Code. As to penalties, special complex crime, only one penalty is specifically prescribed for all the component crimes which are regarded as one indivisible offense. The component crimes are not regarded as distinct crimes and so the penalty for the most serious crime is not the penalty to be imposed nor in its maximum period. It is the penalty specifically provided for the special complex crime that shall be applied according to the rules on imposition of the penalty.

DELITO CONTINUADO, or CONTINUOUS CRIME, is a term used to denote as only one crime a series of felonious acts arising from a single criminal resolution, not susceptible of division, which are carried out in the same place and at about the same time, and violating one and the same penal provision. The acts done must be impelled by one criminal intent or purpose, such that each act merely constitutes a partial execution of a particular crime, violating one and the same penal provision. It involves a concurrence of felonious acts violating a common right, a common penal provision, and Impelled by a single criminal impulse *(People vs. Ledesma, 73 SCRA 77).*

Complex Crime; Aberratio ictus vs. error in personae (1994)

Distinguish aberratio ictus from error in personae.

SUGGESTED ANSWER:

Aberratio ictus or mistake in the blow occurs when a felonious act missed the person against whom it was directed and hit instead somebody who was not the intended victim. Error in personae, or mistake in identity occurs when the felonious act was directed at the person intended, but who turned out to be somebody else. Aberratio ictus brings about at least two (2) felonious consequence, ie. the attempted felony on the intended victim who was not hit and the felony on the unintended victim who was hit. A complex crime of the first form under Art. 48, RPC generally result. In error in personae only one crime is committed

Complex Crime; Aberratio Ictus, Error In Personae & Praeter Intentionem (1999)

What do you understand by aberratio ictus: error in personae; and praeter intentionem? Do they alter the criminal liability of an accused? Explain. (4%)

SUGGESTED ANSWER:

ABERRATIO ICTUS or mistake in the blow occurs when the offender delivered the blow at his intended victim but missed, and instead such blow landed on an unintended victim. The situation generally brings about complex crimes where from a single act, two or more grave or less grave felonies resulted, namely the attempt against the intended victim and the consequence on the unintended victim. As complex crimes, the penalty for the more serious crime shall be the one imposed and in the maximum period. It is only when the resulting felonies are only light that complex crimes do not result and the penalties are to be imposed distinctly for each resulting crime.

ERROR IN PERSONAE or mistake in identity occurs when the offender actually hit the person to whom the blow was directed but turned out to be different from and not the victim intended. The criminal liability of the offender is not affected, unless the mistake in identity resulted to a crime different from what the offender intended to commit, in which case the lesser penalty between the crime intended and the crime committed shall be imposed but in the maximum period *(Art. 49, RFC).*

PRAETER INTENTIONEM or where the consequence went beyond that intended or expected. This is a mitigating circumstance (Art. 13. par. 3, RPC) when there is a notorious disparity between the act or means employed by the offender and the resulting felony, i,e., the resulting felony could not be reasonably anticipated or foreseen by the of fender from the act or means employed by him.

Complex Crime; Aberratio Ictus; Attempted Murder with Homicide (2000)

Despite the massive advertising campaign in media against firecrackers and gun-firing during the New Year's celebrations, Jonas and Jaja bought ten boxes of super lolo and pla-pla in Bocaue, Bulacan. Before midnight of December 31, 1999, Jonas and Jaja started their

celebration by having a drinking spree at Jona's place by exploding their high-powered firecrackers in their neighborhood. In the course of their conversation, Jonas confided to Jaja that he has been keeping a long-time grudge against his neighbor Jepoy in view of the latter's refusal to lend him some money. While under the influence of liquor, Jonas started throwing lighted super lolos inside Jepoy's fence to irritate him and the same exploded inside the latter's yard. Upon knowing that the throwing of the super lolo was deliberate, Jepoy became furious and sternly warned Jonas to stop his malicious act or he would get what he wanted. A heated argument between Jonas and Jepoy ensued but Jaja tried to calm down his friend. At midnight, Jonas convinced Jaja to lend him his .45 caliber pistol so that he could use it to knock down Jepoy and to end his arrogance. Jonas thought that after all, explosions were everywhere and nobody would know who shot Jepoy. After Jaja lent his firearm to Jonas, the latter again started throwing lighted super lolos and pla-plas at Jepoy's yard in order to provoke him so that he would come out of his house. When Jepoy came out, Jonas immediately shot him with Jaja's .45 caliber gun but missed his target. Instead, the bullet hit Jepoy's five year old son who was following behind him, killing the boy instantaneously, a) What crime or crimes can Jonas and Jaja be charged with? Explain. (2%)

SUGGESTED ANSWER:

Jonas and Jaja, can be charged with the complex crime of attempted murder with homicide because a single act caused a less grave and a grave felony (Art. 48. RPC).

Attempted murder is a less grave felony, while consummated homicide is a grave felony: both are punishable by afflictive penalties.

Complex Crime; Doctrine of Aberratio Ictus; Not Applicable (1996)

At the height of an altercation, Pedrito shot Paulo but missed, hitting Tiburcio instead, resulting in the death of the latter. Pedrito, invoking the doctrine of aberratio ictus, claims exemption from criminal liability. If you were the judge, how would you decide the case?

SUGGESTED ANSWER:

If I were the Judge, I will convict Pedrito and find him guilty of the complex crime of Homicide with Attempted Homicide. The single act of firing at Paulo resulted in the commission of two felonies, one grave (homicide) and the other less grave (attempted homicide) thus falling squarely under Art. 48, RPC; hence, the penalty would be for the more serious crime (homicide} in its maximum period (17 years 4 months and 1 day to 20 years).

Aberratio ictus (mistake in the blow) could not be used as a defense as it is not an exempting circumstance. Pedrito is liable under the principle of Art. 4, RPC, which makes a person criminally liable for all the natural and logical consequences of his felonious act

Complex Crimes; Coup d'etat & rebellion & sedition (2003)

1) Can there be a complex crime of coup d'etat with rebellion? 2% 2) Can there be a complex crime of coup d'etat with sedition? 2%

SUGGESTED ANSWER:

1) Yes, if there was conspiracy between the offender/ offenders committing the coup d'etat and the offenders committing the rebellion. By conspiracy, the crime of one would be the crime of the other and vice versa. This is possible because the offender in coup d'etat may be any person or persons belonging to the military or the national police or a public officer, whereas rebellion does not so require. Moreover, the crime of coup d'etat may be committed singly, whereas rebellion requires a public uprising and taking up arms to overthrow the duly constituted government. Since the two crimes are essentially different and punished with distinct penalties, there is no legal impediment to the application of Art. 48 of the Revised Penal Code.

2) Yes, coup d'etat can be complexed with sedition because the two crimes are essentially different and distinctly punished under the Revised Penal Code. Sedition may not be directed against the Government or non-political in objective, whereas coup d'etat is always political in objective as it is directed against the Government and led by persons or public officer holding public office belonging to the military or national police. Art. 48 of the Code may apply under the conditions therein provided.

ALTERNATIVE ANSWER:

The crime of coup d'etat cannot be complexed with the crime of rebellion because both crimes are directed against the Government or for political purposes, although the principal offenders are different. The essence may be the same and thus constitute only one crime. In this situation, the two crimes are not distinct and therefore, may not be proper to apply Article 48 of the Code.

Complex Crimes; Determination of the Crime (1999)

A, actuated by malice and with the use of a fully automatic M-14 sub-machine gun, shot a group of persons who were seated in a cockpit with one burst of successive, continuous, automatic fire. Four (4) persons were killed thereby, each having hit by different bullets coming from the sub-machine gun of A. Four (4) cases of murder were filed against A. The trial court ruled that there was only one crime committed by A for the reason that, since A performed only one act, he having pressed the trigger of his gun only once, the crime committed was murder. Consequently, the trial judge sentenced A to just one penalty of reclusion perpetua. Was the decision of the trial judge correct? Explain. (4%)

SUGGESTED ANSWER:

The decision of the trial judge is not correct. When the offender made use of an automatic firearm, the acts committed are determined by the number of bullets discharged inasmuch as the firearm being automatic, the offender need only press the trigger once and it would fire continually. For each death caused by a distinct and separate bullet, the accused incurs distinct criminal liability. Hence, it is not the act of pressing the trigger which should be considered as producing the several felonies, but the number of bullets which actually produced them.

Complex Crimes; Nature & Penalty Involved (1999)

What constitutes a complex crime? How many crimes maybe involved in a complex crime? What is the penalty therefor? (4%)

SUGGESTED ANSWER:

A complex crime is constituted when a single act caused two or more grave or less grave felonies or when an offense is committed as a necessary means to commit another offense (Art. 48, RPC). At least two (2) crimes are involved in a complex crime; either two or more grave or less grave felonies resulted from a single act, or an offense is committed as a necessary means for committing another. The penalty for the more serious crime shall be imposed and in its maximum period. (Art. 48, RPC)

Complex Crimes; Ordinary Complex Crime vs. Special Complex Crime (2003)

Distinguish between an ordinary complex crime and a special complex crime as to their concepts and as to the imposition of penalties. 2%

SUGGESTED ANSWER:

IN CONCEPT -

An ORDINARY COMPLEX CRIME is made up of two or more crimes being punished in distinct provisions of the Revised Penal Code but alleged in one Information either because they were brought about by a single felonious act or because one offense is a necessary means for committing the other offense or offenses. They are alleged in one Information so that only one penalty shall be imposed.

A SPECIAL COMPLEX CRIME, on the other hand, is made up of two or more crimes which are considered only as components of a single indivisible offense being punished in one provision of the Revised Penal Code.

AS TO PENALTIES -In ORDINARY COMPLEX CRIME, the penalty for the most serious crime shall be imposed and in its maximum period.

In SPECIAL COMPLEX CRIME, only one penalty is specifically prescribed for all the component crimes which are regarded as one indivisible offense. The component crimes are not regarded as distinct crimes and so the penalty for the most serious crime is not the penalty to be imposed nor in its maximum period. It is the penalty specifically provided for the special complex crime that shall be applied according to the rules on imposition of the penalty.

Continuing Offense vs. Delito Continuado (1994)

Differentiate delito continuado from a continuing offense.

SUGGESTED ANSWER:

DELITO CONTINUADO, or CONTINUOUS CRIME, is a term used to denote as only one crime a series of felonious acts arising from a single criminal resolution, not susceptible of division, which are carried out in the same place and at about the same time, and violating one and the same penal provision. The acts done must be impelled by one criminal intent or purpose, such that each act merely constitutes a partial execution of a particular crime, violating one and the same penal provision. It involves a concurrence of felonious acts violating a common right, a common penal provision, and impelled by a single criminal impulse *(People vs. Ledesma, 73 SCRA 77).*

On the other hand, a CONTINUING OFFENSE is one whose essential ingredients took place in more than one municipality or city, so much so that the criminal prosecution may be instituted and the case tried in the competent court of any one of such municipality or city.

The term "CONTINUED CRIME" or delito continuado mandates that only one information should be filed against the offender although a series of felonious acts were performed; the term "continuing crime" is more pertinently used with reference to the venue where the criminal action may be instituted.

Death Penalty (2004)

A. The death penalty cannot be inflicted under which of the following circumstances: 1) When the guilty person is at least 18 years of age at
the time of the commission of the crime. 2) When the guilty person is more than 70 years of age. 3) When, upon appeal to or automatic review by the
Supreme Court, the required majority for the imposition of the death penalty is not obtained. 4) When the person is convicted of a capital crime but before execution becomes insane. 5) When the accused is a woman while she is pregnant or within one year after delivery. Explain your answer or choice briefly. (5%)

SUGGESTED ANSWER:

A. Understanding the word "inflicted" to mean the imposition of the death penalty, not its execution, the circumstance in which the death penalty cannot be inflicted is no. 2: "when the guilty person is more than 70 years of age" (Art. 47, Revised Penal Code). Instead, the penalty shall be commuted to reclusion perpetua, with the accessory penalties provided in Article 40, RFC.

In circumstance no. 1 when the guilty person is at least 18 years of age at the time of the commission of the

crime, the death penalty can be imposed since the offender is already of legal age when he committed the crime.

Circumstance no. 3 no longer operates, considering the decision of the *Supreme Court in People vs. Efren Mateo (G.R. 147678-87, July 7, 2004)* providing an intermediate review for such cases where the penalty imposed is death, reclusion perpetua or life imprisonment before they are elevated to the Supreme Court.

In circumtances nos. 4 & 5, the death penalty can be imposed if prescribed by the law violated although its execution shall be suspended when the convict becomes insane before it could be executed and while he is insane.

Likewise, the death penalty can be imposed upon a woman but its execution shall be suspended during her pregnancy and for one year after her delivery.

ALTERNATIVE ANSWER:

The word "INFLICTED" is found only in Art. 83 to the effect that the death penalty may not be "INFLICTED" upon a pregnant woman, such penalty is to be suspended. If "INFLICTED" is to be construed as "EXECUTION", then No. 5 is the choice.

Death Penalty; Qualified Rape; Requisites (2004)

GV was convicted of raping TC, his niece, and he was sentenced to death. It was alleged in the information that the victim was a minor below seven years old, and her mother testified that she was only six years and ten months old, which her aunt corroborated on the witness stand. The information also alleged that the accused was the victim's uncle, a fact proved by the prosecution.

On automatic review before the Supreme Court, accused-appellant contends that capital punishment could not be imposed on him because of the inadequacy of the charges and the insufficiency of the evidence to prove all the elements of the heinous crime of rape beyond reasonable doubt. Is appellant's contention correct? Reason briefly. (5%)

SUGGESTED ANSWER:

Yes, appellant's contention is correct insofar as the age of the victim is concerned. The age of the victim raped has not been proved beyond reasonable doubt to constitute the crime as qualified rape and deserving of the death penalty. The guidelines in appreciating age as a qualifying circumstance in rape cases have not been met, to wit: 1) The primary evidence of the age of the victim is her birth certificate; 2) In the absence of the birth certificate, age of the

victim maybe proven by authentic document, such as baptismal certificate and school records; 3) If the aforesaid documents are shown to have been

lost or destroyed or otherwise unavailable, the testimony, if clear and credible of the victim's mother or any member of the family, by consanguinity or affinity, who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient but only under the following circumstances: (a) If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; (b) If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; (c) If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4) In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age under the circumstances above-stated, complainant's sole testimony can suffice, provided that it is expressly and clearly admitted by the accused *(People us. Pruna, 390 SCRA 577 [2002]).*

Habitual Delinquency & Recidivism (2001)

Juan de Castro already had three (3) previous convictions by final judgment for theft when he was found guilty of Robbery with Homicide. In the last case, the trial Judge considered against the accused both recidivism and habitual delinquency. The accused appealed and contended that in his last conviction, the trial court cannot consider against him a finding of recidivism and, again, of habitual delinquency. Is the appeal meritorious? Explain. (5%)

SUGGESTED ANSWER:

No, the appeal is not meritorious. Recidivism and habitual delinquency are correctly considered in this case because the basis of recidivism is different from that of habitual delinquency. Juan is a recidivist ... Habitual delinquency, which brings about an additional penalty when an offender is convicted a third time or more for specified crimes, is correctly considered because Juan had already three (3) previous convictions by final judgment for theft and again convicted for Robbery With Homicide. And the crimes specified as basis for habitual delinquency includes, inter alia, theft and robbery.

Indeterminate Sentence Law (1994)

Itos was convicted of an offense penalized by a special law. The penalty prescribed is not less than six years but not more than twelve years. No modifying circumstance attended the commission of the crime. If you were the judge, will you apply the Indeterminate Sentence Law? If so, how will you apply it?

SUGGESTED ANSWER:

If I were the judge, I will apply the provisions of the Indeterminate Sentence Law, as the last sentence of Section 1 Act 4103, specifically provides the application thereof for violations of special laws.

Under the same provision, the minimum must not be less than the minimum provided therein (six years and one day) and the maximum shall not be more than the

maximum provided therein, i.e. twelve years. *(People vs. Rosalina Reyes, 186 SCRA 184)*

Indeterminate Sentence Law (1999)

Andres is charged with an offense defined by a special law. The penalty prescribed for the offense is imprisonment of not less than five (5) years but not more than ten [10) years. Upon arraignment, he entered a plea of guilty. In the imposition of the proper penalty, should the Indeterminate Sentence Law be applied? If you were the Judge trying the case, what penalty would you impose on Andres? (4%)

SUGGESTED ANSWER:

Yes, the Indeterminate Sentence Law should be applied because the minimum imprisonment is more than one (1) year.

If I were the Judge, I will impose an indeterminate sentence, the maximum of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum penalty prescribed by the same. I have the discretion to impose the penalty within the said minimum and maximum.

Indeterminate Sentence Law (1999)

A was convicted of illegal possession of grease guns and two Thompson sub-machine guns punishable under the old law [RA No,4] with imprisonment of from five (5) to ten (10) years. The trial court sentenced the accused to suffer imprisonment of five (5) years and one (1) day. Is the penalty thus imposed correct? Explain. (3%)

SUGGESTED ANSWER:

Indeterminate Sentence Law does not apply to: The penalty imposed, being only a straight penalty, is not correct because it does not comply with the Indeterminate Sentence Law which applies to this case. Said law requires that if the offense is punished by any law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum penalty fixed by the law and the minimum shall not be less than the minimum penalty prescribed by the same.

Indeterminate Sentence Law (2002)

How are the maximum and the minimum terms of the indeterminate sentence for offenses punishable under the Revised Penal Code determined? (3%)

SUGGESTED ANSWER:

For crimes punished under the Revised Penal Code, the maximum term of the Indeterminate sentence shall be the penalty properly imposable under the same Code after considering the attending mitigating and/or aggravating circumstances according to Art, 64 of said Code. The minimum term of the same sentence shall be fixed within the range of the penalty next lower in degree to that prescribed for the crime under the said Code.

Under the law, what is the purpose for fixing the maximum and the minimum terms of the indeterminate sentence? (2%)

SUGGESTED ANSWER:

The purpose of the law in fixing the minimum term of the sentence is to set the grace period at which the convict may be released on parole from imprisonment, unless by his conduct he is not deserving of parole and thus he shall continue serving his prison term in Jail but in no case to go beyond the maximum term fixed in the sentence.

Indeterminate Sentence Law (2005)

Harold was convicted of a crime defined and penalized by a special penal law where the imposable penalty is from 6 months, as minimum, to 3 years, as maximum.

State with reasons whether the court may correctly impose the following penalties:

a) a straight penalty of 10 months;

SUGGESTED ANSWER:

Yes, because the penalty is less than one year, a straight penalty may be imposed. *(People v. Arellano, G.R. No, 46501, October 5, 1939)*

ALTERNATIVE ANSWER:

Under the Indeterminate Sentence Law, the minimum imposable penalty shall be imposed but the maximum shall not exceed the maximum imposable by law.

b) 6 months, as minimum, to 11 months, as maximum;

SUGGESTED ANSWER:

No, because Indeterminate Sentence Law does not apply when the penalty imposed is less than one year (Sec. 2, Art. 4103, as amended).

c) a straight penalty of 2 years. (5%)

SUGGESTED ANSWER:

No, because the Indeterminate Sentence Law will apply when the minimum of the penalty exceeds one year.

ALTERNATIVE ANSWER.

If the imposition of straight penalty which consists of the minimum period of the penalty prescribed by law, then it may be allowed because it favors the accused.

Indeterminate Sentence Law; Exceptions (1999)

Under what circumstances is the Indeterminate Sentence Law not applicable? (2%)

SUGGESTED ANSWER:

1) Persons convicted of offenses punished with death penalty or life imprisonment; 2) Those convicted of treason, conspiracy or proposal to commit treason; 3) Those convicted of misprision of treason, rebellion,

sedition or espionage; 4) Those convicted of piracy; 5) Those who are habitual delinquents; 6) Those who shall have escaped from confinement or

evaded sentence; 7) Those who violated the terms of conditional pardon granted to them by the Chief Executive; 8) Those whose maximum term of imprisonment does not exceed one year;

9) Those who, upon the approval of the law (December 5, 1933). had been sentenced by final Judgment;

10) Those sentenced to the penalty of destierro or suspension.

Indeterminate Sentence Law; Exceptions (2003)

When would the Indeterminate Sentence Law be inapplicable? 4%

SUGGESTED ANSWER:

The Indeterminate Sentence Law is not applicable to:
1) those persons convicted of offenses punished with death penalty or life-imprisonment or reclusion perpetua;
2) those convicted of treason, conspiracy or proposal to commit treason; 3) those convicted of misprision of treason, rebellion,
sedition or espionage; 4) those convicted of piracy; 5) those who are habitual delinquents; 6) those who shall have escaped from confinement or

evaded sentence;
7) those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof;
8) those whose maximum term of imprisonment does not exceed one year; 9) those already sentenced by final judgment at the time of approval of this Act; and 10) those whose sentence imposes penalties which do not involve imprisonment, like destierro.

Penalties: Fine or Imprisonment vs. Subsidiary Imprisonment (2005)

E and M are convicted of a penal law that imposes a penalty of fine or imprisonment or both fine and imprisonment. The judge sentenced them to pay the fine, jointly and severally, with subsidiary imprisonment in case of insolvency. Is the penalty proper? Explain.

SUGGESTED ANSWER:

The penalty is not proper. The two accused must separately pay the fine, which is their penalty. Solidary liability applies only to civil liabilities.

ALTERNATIVE ANSWER:

NO, because in penal law when there are several offenders, the court in the exercise of its discretion shall determine what shall be the share of each offender depending upon the degree of participation – as principal, accomplice or accessory. If within each class of offender, there are more of them, such as more than one principal or more than one accomplice or accessory, the liability in each class of offender shall be subsidiary. Anyone of the may be required to pay the civil liability pertaining to such offender without prejudice to recovery from those whose share have been paid by another.

May the judge impose an alternative penalty of fine or imprisonment? Explain. (4%)

SUGGESTED ANSWER:

No. A fine, whether imposed as a single or as an alternative penalty, should not and cannot be reduced or converted into a prison term. There is no rule for transmutation of the amount of a fine into a term of imprisonment. *(People v. Dacuycuy, G.R. No. L-45127 May 5, 1989)*

Penalties: Pecuniary Penalties vs. Pecuniary Liabilities (2005)

Distinguish pecuniary penalties from pecuniary liabilities. (2%)

SUGGESTED ANSWER:

Pecuniary liabilities do not include restitution, but include reparation of damages caused, the indemnification for consequential damages, as well as fines and cost of the proceedings.

Pecuniary penalties include fines and cost of the proceedings.

Penalties; Complex Crime of Estafa (1997)

A was convicted of the complex crime of estafa through falsification of public document. Since the amount Involved did not exceed P200.00, the penalty prescribed by law for estafa is arresto mayor in its medium and maximum periods. The penalty prescribed by law for falsification of public document is prision mayor plus fine not to exceed P5,000.00. Impose the proper prison penalty.

SUGGESTED ANSWER:

The proper penalty is ANY RANGE WITHIN prision correccional (six (6) months and one (1) day to six (6) years) as MINIMUM, to ANY RANGE within prision mayor maximum (ten (10) years and one (1) day to twelve (12) years) as MAXIMUM. This is in accordance with People us, Gonzales, 73 Phil, 549, where It was ruled that for the purpose of determining the penalty next lower in degree, the penalty that should be considered as a starting point is the whole of prision mayor, it being the penalty prescribed by law, and not prision mayor in its maximum period, which is only the penalty actually applied because of Article 48 of the Revised Penal Code. The penalty next lower in degree therefor is prision correccional and it is within the range of this penalty that the minimum should be taken.

Penalties; Factors to Consider (1991)

Imagine that you are a Judge trying a case, and based on the evidence presented and the applicable law, you have decided on the guilt of two (2) accused. Indicate the five (5) steps you would follow to determine the exact penalty to be imposed. Stated differently, what are the factors you must consider to arrive at the correct penalty?

SUGGESTED ANSWER:

1 the crime committed;
2 Stage of execution and degree of participation;
3 Determine the penalty;
4 Consider the modifying circumstances;
5 Determine whether Indeterminate Sentence Law is applicable or not.

Penalties; Homicide w/ Modifying Circumstance (1995)
Homer was convicted of homicide. The trial court appreciated the following modifying circumstances: the aggravating circumstance of nocturnity, and the mitigating circumstances of passion and obfuscation, no intent to commit so grave a wrong, illiteracy and voluntary surrender. The imposable penalty for homicide is reclusion temporal the range of which is twelve (12) years and one (1) day to twenty (20) years. Taking into account the attendant aggravating and mitigating circumstances, and applying the Indeterminate Sentence Law, determine the proper penalty to be imposed on the accused.

SUGGESTED ANSWER:
It appears that there is one aggravating circumstance (nocturnity), and four mitigating circumstances (passion and obfuscation, no intent to commit so grave a wrong as that committed and voluntary surrender). Par. 4, Art. 64 should be applied. Hence there will be off-setting of modifying circumstances, which will now result in the excess of three mitigating circumstances. This will therefore justify in reducing the penalty to the minimum period.

The existence of an aggravating circumstance, albeit there are four aggravating, will not justify the lowering of the penalty to the next lower degree under paragraph 5 of said Article, as this is applicable only if THERE IS NO AGGRAVATING CIRCUMSTANCE present. Since the crime committed is Homicide and the penalty therefor is reclusion temporal, the MAXIMUM sentence under the Indeterminate Sentence Law should be the minimum of the penalty, which is 12 years and 1 day to 14 years and 8 months. The MINIMUM penalty will thus be the penalty next lower in degree, which is prision mayor in its full extent (6 years and 1 day to 12 years). Ergo, the proper penalty would be 6 years and 1 day, as minimum, to 12 years and 1 day, as maximum. I believe that because of the remaining mitigating circumstances after the off-setting it would be very logical to impose the minimum of the MINIMUM sentence under the ISL and the minimum of the MAXIMUM sentence.

Penalties; Mitigating Circumstances w/out Aggravating Circumstance (1997)
Assume in the preceding problem that there were two mitigating circumstances and no aggravating circumstance. Impose the proper prison penalty.
SUGGESTED ANSWER:
There being two (2) mitigating circumstances without any aggravating circumstance, the proper prison penalty is arresto mayor (in any of its periods, ie. ranging from one (1) month and one (1) day to six (6) months) as MINIMUM to prision correccional in its maximum period four (4) years, two (2) months, and one (1) day to six (6) years as MAXIMUM. Under Art. 64, par. 5 of the Revised Penal Code, when a penalty contains three periods, each one of which forms a period in accordance with Article 76 and 77 of the same Code, and there are two or more mitigating circumstances and no aggravating circumstances, the penalty next lower in degree should be imposed. For purposes of the Indeterminate Sentence Law, the penalty next lower in degree should be determined without regard as to whether the basic penalty provided by the Revised Penal Code should be applied in its maximum or minimum period as circumstances modifying liability may require. The penalty next lower in degree to prision correccional. Therefore, as previously stated, the minimum should be within the range of arresto mayor and the maximum is within the range of prision correctional in its maximum period.

Penalties; Parricide w/ Mitigating Circumstance (1997)
A and B pleaded guilty to the crime of parricide. The court found three mitigating circumstances, namely, plea of guilty, lack of Instruction and lack of intent to commit so grave a wrong as that committed. The prescribed penalty for parricide is reclusion perpetua to death. Impose the proper principal penalty.
SUGGESTED ANSWER:
The proper penalty is reclusion perpetua. Even if there are two or more mitigating circumstances, a court cannot lower the penalty by one degree (Art. 63. par. 3, Revised Penal Code; People vs. Formigones, 87 Phil. 685). In U.S. vs. Relador 60 Phil. 593, where the crime committed was parricide with the two (2) mitigating circumstances of illiteracy and lack of intention to commit so grave a wrong, and with no aggravating circumstance, the Supreme Court held that the proper, penalty to be imposed is reclusion perpetua.

Penalties; Preventive Imprisonment (1994)
1) When is there preventive imprisonment? 2) When is the accused credited with the full time of his preventive imprisonment, and when is he credited with 4/5 thereof?

SUGGESTED ANSWER:
1) There is preventive imprisonment when [a) an offender is detained while the criminal case against him is being heard, either because the crime committed is a capital offense and not bailable, or even if the crime committed was bailable, the offender could not post the required bail for his provisional liberty.

2) An accused is credited with the full time of his preventive imprisonment if he voluntarily agreed in writing to abide by the rules of the institution imposed upon its prisoners, provided that:
a) the penalty imposed on him for the crime committed consists of a deprivation of liberty;
b) he is not disqualified from such credit for being a recidivist, or for having been previously convicted for two or more times of any crime, or for having failed to surrender voluntarily for the execution of the sentence upon being so summoned (Art. 29, RPC).

Where the accused however did not agree he would only be credited with 4/5 of the time he had undergone preventive imprisonment.

Penalties; Reclusion Perpetua (RA) No. 7959 (2005)

Under Article 27 of the Revised Penal Code, as amended by Republic Act (RA) No. 7959, reclusion perpetua shall be from 20 years and 1 day to 40 years. Does this mean that reclusion perpetua is now a divisible penalty? Explain. (2%)

SUGGESTED ANSWER:

No, because the Supreme Court has repeatedly called the attention of the Bench and the Bar to the fact that the penalties of reclusion perpetua and life imprisonment are not synonymous and should be applied correctly and as may be specified by the applicable law. Reclusion perpetua has a specific duration of 20 years and 1 day to 40 years (Art. 27) and accessory penalties (Art. 41), while life imprisonment has no definite term or accessory penalties. Also, life imprisonment is imposable on crimes punished by special laws, and not on felonies in the Code

(People vs. De Guzman, G.R. Nos. 51385-86, Jan. 22, 1993; People vs. Estrella, G.R. Nos. 92506-07, April 28, 1993; People vs. Alvero, G.R. No. 72319, June 30,1993; People vs. Lapiroso, G.R. No. 122507, Feb. 25, 1999).[see Criminal Law Conspectus, page 156]

Penalties; Reclusion Perpetua vs. Life Imprisonment (1994)

Differentiate reclusion perpetua from life imprisonment.

SUGGESTED ANSWER:

RECLUSION PERPETUA is that penalty provided for in the Revised Penal Code for crimes defined in and penalized therein except for some crimes defined by special laws which impose reclusion perpetua, such as violations of Republic Act 6425, as amended by Republic Act 7659 or of PD 1860; while LIFE IMPRISONMENT is a penalty usually provided for in special laws. Reclusion perpetua has a duration of twenty (20) years and one (1) day to forty [40] years under Republic Act 7659, while life imprisonment has no duration; reclusion perpetua may be reduced by one or two degrees; reclusion perpetuates accessory penalties while life imprisonment does not have any accessory penalties *(People vs. Baguio, 196 SCRA 459, People vs. Panellos, 205 SCRA 546).*

Penalties; Reclusion Perpetua vs. Life Imprisonment (2001)

After trial, Judge Juan Laya of the Manila RTC found Benjamin Garcia guilty of Murder, the victim having sustained several bullet wounds in his body so that he died despite medical assistance given in the Ospital ng Manila. Because the weapon used by Benjamin was unlicensed and the qualifying circumstance of treachery was found to be present. Judge Laya rendered his decision convicting Benjamin and sentencing him to "reclusion perpetua or life imprisonment".

Are "reclusion perpetua" and life imprisonment the same and can be imposed interchangeably as in the foregoing sentence? Or are they totally different? State your reasons. (3%)

SUGGESTED ANSWER:

The penalty of reclusion perpetua and the penalty of life Imprisonment are totally different from each other and therefore, should not be used interchangeably.

Reclusion perpetua is a penalty prescribed by the Revised Penal Code, with a fixed duration of imprisonment from 20 years and 1 day to 40 years, and carries it with accessory penalties.

Life imprisonment, on the other hand, is a penalty prescribed by special laws, with no fixed duration of imprisonment and without any accessory penalty.

Probation Law: Proper Period (2005)

Maganda was charged with violation of the Bouncing Checks Law (BP 22) punishable by imprisonment of not less than 30 days but not more than 1 year or a fine of not less than but not more than double the amount of the check, which fine shall not exceed P200,000.00, or both. The court convicted her of the crime and sentenced her to pay a fine of P50,000.00 with subsidiary imprisonment in case of insolvency, and to pay the private complainant the amount of the check. Maganda was unable to pay the fine but filed a petition for probation. The court granted the petition subject to the condition, among others, that she should not change her residence without the court's prior approval.

a) What is the proper period of probation?

SUGGESTED ANSWER:

The period shall not be less than twice the total number of days of subsidiary imprisonment. Under Act No. 1732, subsidiary imprisonment for violations of special laws shall not exceed 6 months at the rate of one day of imprisonment for every F2.50. Hence, the proper period of probation should not be less than (6 months nor more than 12 months. Since P50,000.00 fine is more than the maximum subsidiary imprisonment of 6 months at P2.50 a day.

b) Supposing before the Order of Discharge was issued by the court but after the lapse of the period of probation, Maganda transferred residence without prior approval of the court. May the court revoke the Order of Probation and order her to serve the subsidiary imprisonment? Explain.

SUGGESTED ANSWER:

Yes. The Court may revoke her probation. Probation is not coterminous with its period. There must first be issued by the court an order of final discharge based on the report and recommendation of the probation officer. Only then can the case of the probationer be terminated.

(Bala v. Martinez, G.R. No. 67301, January 29, 1990, citing Sec. 16 of P.D. No. 968)

Probation Law; Barred by Appeal (1994)

On February 3, 1986, Roberto was convicted of arson through reckless imprudence and sentenced to pay a fine of P15,000.00, with subsidiary imprisonment in case of insolvency by the Regional Trial Court of Quezon City.

On February 10, 1986, he appealed to the Court of Appeals. Several months later, he filed a motion to withdraw the appeal on the ground that he is applying for probation. On May 7, 1987, the Court of Appeals granted the motion and considered the appeal withdrawn.

On June 10, 1987, the records of the case were remanded to the trial court. Roberto filed a "Motion for Probation" praying that execution of his sentence be suspended, and that a probation officer be ordered to conduct an Investigation and to submit a report on his probation.

The judge denied the motion on the ground that pursuant to Presidential Decree No. 1990, which took effect on July 16,1986, no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction. Is the denial of Roberto's motion correct?

SUGGESTED ANSWER:

Yes. Even if at the time of his conviction Roberto was qualified for probation but that at the time of his application for probation, he is no longer qualified, he is not entitled to probation. The qualification for probation must be determined as of the time the application is filed in Court *(Bernardo vs. Judge, etal. GRNo. L86561,Nov, 10. 1992; Edwin de la Cruz vs. Judge Callejo. et al, SP-19655, April 18, 1990, citing Llamado vs. CA, et al, GR No. 84859, June 28, 1989; Bernardo us. Judge Balagot, etal, GR 86561, Nov. 10, 1992).*

Probation Law; Barred by Appeal (2001)

A, a subdivision developer, was convicted by the RTC of Makati for failure to issue the subdivision title to a lot buyer despite full payment of the lot, and sentenced to suffer one year Imprisonment. A appealed the decision of the RTC to the Court of Appeals but his appeal was dismissed. May A still apply for probation? Explain. (5%)

SUGGESTED ANSWER:

No, A is no longer qualified to apply for probation after he appealed from the judgment of conviction by the RTC. The probation law (PD 968, as amended by PD1990) now provides that no application for probation shall be entertained or granted if the accused has perfected an appeal from the judgment of conviction (Sec. 4, PD 968).

Probation Law; Maximum Term vs. Total Term (1997)

The accused was found guilty of grave oral defamation in sixteen (16) informations which were tried jointly and was sentenced in one decision to suffer in each case a prison term of one (1) year and one (1) day to one (1) year and eight (8) months of prision correccional. Within the period to appeal, he filed an application for probation under the Probation Law of 1976, as amended. Could he possibly qualify for probation?

SUGGESTED ANSWER:

Yes. In *Francisco vs. Court of Appeals, 243 SCRA 384*, the Supreme Court held that in case of one decision imposing multiple prison terms, the totality of the prison terms should not be taken into account for the purposes of determining the eligibility of the accused for the probation. The law uses the word "maximum term", and not total term. It is enough that each of the prison terms does not exceed six years. The number of offenses is immaterial for as long as the penalties imposed, when taken individually and separately, are within the probationable period.

Probation Law; Order Denying Probation; Not Appealable (2002)

A was charged with homicide. After trial, he was found guilty and sentenced to six (6) years and one (1) day in prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. Prior to his conviction, he had been found guilty of vagrancy and imprisoned for ten (10) days of arresto manor and fined fifty pesos (P50.00). Is he eligible for probation? Why? (3%)

SUGGESTED ANSWER:

No, he is not entitled to the benefits of the Probation Law (PD 968, as amended) does not extend to those sentenced to serve a maximum term of imprisonment of more than six years (Sec. 9a).

It is of no moment that in his previous conviction A was given a penalty of only ten (10) days of arresto mayor and a fine of P50.00.

B. May a probationer appeal from the decision revoking the grant of probation or modifying the terms and conditions thereof? (2%)

SUGGESTED ANSWER:

No. Under Section 4 of the Probation Law, as amended, an order granting or denying probation is not appealable.

Probation Law; Period Covered (2004)

PX was convicted and sentenced to imprisonment of thirty days and a fine of one hundred pesos. Previously, PX was convicted of another crime for which the penalty imposed on him was thirty days only. Is PX entitled to probation? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes, PX may apply for probation. His previous conviction for another crime with a penalty of thirty days imprisonment or not exceeding one (1) month does not disqualify him from applying for probation; the penalty for his present conviction does not disqualify him either from applying for probation, since the imprisonment does not exceed six (6) years *(Sec. 9, Pres. Decree No. 968).*

Probation Law; Right; Barred by Appeal (1995)

In a case for violation of Sec. 8, RA 6425, otherwise known as the Dangerous Drugs Act, accused Vincent was given the benefit of the mitigating circumstances of voluntary plea of guilt and drunkenness not otherwise habitual. He was sentenced to suffer a penalty of six (6) years and one (1) day and to pay a fine of P6,000.00 with the accessory penalties provided by law, plus costs. Vincent applied for probation. The probation officer favorably recommended his application.

1 If you were the Judge, what action will you take on the application? Discuss fully.

2 Suppose that Vincent was convicted of a crime for which he was sentenced to a maximum penalty of ten (10) years. Under the law, he is not eligible for probation. He seasonably appealed his conviction. While affirming the judgment of conviction, the appellate court reduced the penalty to a maximum of four (4) years and four (4) months taking into consideration certain modifying circumstances. Vincent now applies for probation. How will you rule on his application? Discuss fully.

SUGGESTED ANSWER:

1. If I were the judge, I will deny the application for probation. The accused is not entitled to probation as Sec. 9 of the Probation Law, PD NO. 968, as amended, specifically mentions that those who "are sentenced to serve a maximum term of imprisonment of more than six years" are not entitled to the benefits of the law.

2. The law and jurisprudence are to the effect that appeal by the accused from a sentence of conviction forfeits his right to probation.*(Sec. 4, PD No. 968. as amended by PD 1990; Bernardo us. Balagot; Francisco vs. CA: Llamado vs. CA; De la Cruz vs. Judge Callejo, CA case).*

This is the second consecutive year that this question was asked. It is the sincere belief of the Committee that there is a need to re-examine the doctrine. Firstly, much as the accused wanted to apply for probation he is proscribed from doing so as the maximum penalty is NOT PROBATIONABLE. Secondly, when the maximum penalty was reduced to one which allows probation it is but fair and just to grant him that right because it is apparent that the trial judge committed an error and for which the accused should not be made to suffer. Judicial tribunals in this jurisdiction are not only courts of law but also of equity. Thirdly, the judgment of the appellate court should be considered a new decision as the trial court's decision was vacated; hence, he could take advantage of the law when the decision is remanded to the trial court for execution (Please see Dissenting opinion in Francisco vs. CA). It is suggested, therefore, that an examinee answering in this tenor should be credited with some points.

Probation Law; Right; Barred by Appeal (2003)

Juan was convicted of the Regional Trial Court of a crime and sentenced to suffer the penalty of imprisonment for a minimum of eight years. He appealed both his conviction and the penalty imposed upon him to the Court of Appeals. The appellate court ultimately sustained Juan's conviction but reduced his sentence to a maximum of four years and eight months imprisonment. Could Juan forthwith file an application for probation? Explain. 8%

SUGGESTED ANSWER:

No, Juan can no longer avail of the probation because he appealed from the judgment of conviction of the trial court, and therefore, cannot apply for probation anymore. Section 4 of the Probation Law, as amended, mandates that no application for probation shall be entertained or granted if the accused has perfected an appeal from the judgment of conviction.

Suspension of Sentence; Adults/Minors (2006)

There are at least 7 instances or situations in criminal cases wherein the accused, either as an adult or as a minor, can apply for and/or be granted a suspended sentence. Enumerate at least 5 of them. (5%)

SUGGESTED ANSWER:

1. Suspension of sentence of minor under P.D. 603 as amended by R.A. 9344.
2. Suspension of sentence of minor above 15 but below 18 years of age at the time of trial under R.A. 9344.
3. Suspension of sentence of minor above 15 but below 18 years of age at the commission of the offense, while acting with discernment.
4. Suspension of sentence by reason of insanity (Art. 79, Revised Penal Code).
5. Suspension of sentence for first offense of a minor violating RJV. 9165. (Sec. 32)
6. Suspension of sentence under the probation law. (P.D. 968)
7. Suspension of death sentence of a pregnant woman. (Art. 83, Revised Penal Code)

(NOTA BENE: R.A. 9344 is outside the coverage of the examination)

Suspension of Sentence; Minors (2003)

A was 2 months below 18 years of age when he committed the crime. He was charged with the crime 3 months later. He was 23 when he was finally convicted and sentenced. Instead of preparing to serve a jail term, he sought a suspension of the sentence on the ground that he was a juvenile offender Should he be entitled to a suspension of sentence? Reasons. 4%

SUGGESTED ANSWER:

No, A is not entitled to a suspension of the sentence because he is no longer a minor at the time of promulgation of the sentence. For purposes of suspension of sentence, the offender's age at the time of promulgation of the sentence is the one considered, not his age when he committed the crime. So although A was below 18 years old when he committed the crime, but he was already 23 years old when sentenced, he is no longer eligible for suspension of the sentence.

Can juvenile offenders, who are recidivists, validly ask for suspension of sentence? Explain. 4%

SUGGESTED ANSWER:

Yes, so long as the offender is still a minor at the time of the promulgation of the sentence. The law establishing Family Courts, Rep. Act 8369, provides to this effect: that if the minor is found guilty, the court should promulgate the sentence and ascertain any civil liability which the accused may have incurred. However, the sentence shall be suspended without the need of application pursuant to PD 603, otherwise known as the "Child and Youth Welfare Code" (RA 8369, Sec. 5a), It is under PD 603 that an application for suspension of the

sentence is required and thereunder it is one of the conditions for suspension of sentence that the offender be a first time convict: this has been displaced by RA 8369.

Suspension of Sentence; Youthful Offender (1995)

Victor, Ricky, Rod and Ronnie went to the store of Mang Pandoy. Victor and Ricky entered the store while Rod and Ronnie posted themselves at the door. After ordering beer Ricky complained that he was shortchanged although Mang Pandoy vehemently denied it. Suddenly Ricky whipped out a knife as he announced "Hold-up ito!" and stabbed Mang Pandoy to death. Rod boxed the store's salesgirl Lucy to prevent her from helping Mang Pandoy. When Lucy ran out of the store to seek help from people next door she was chased by Ronnie. As soon as Ricky had stabbed Mang Pandoy, Victor scooped up the money from the cash box. Then Victor and Ricky dashed to the street and shouted, "Tumakbo na kayo!" Rod was 14 and Ronnie was 17. The money and other articles looted from the store of Mang Pandoy were later found in the houses of Victor and Ricky.

1 Discuss fully the criminal liability of Victor, Ricky, Rod and Ronnie.
2 Are the minors Rod and Ronnie entitled to suspended sentence under The Child and Youth Welfare Code? Explain.

SUGGESTED ANSWER:

1 . All are liable for the special complex crime of robbery with homicide....

2. No, because the benefits of suspension of sentence is not available where the youthful offender has been convicted of an offense punishable by life imprisonment or death, pursuant to P.D. No. 603, Art. 192, The complex crime of robbery with homicide is punishable by reclusion perpetua to death under Art. 294 (1), RFC [*People vs. Galit. 230 SCRA 486).*

EXTINCTION OF CRIMINAL LIABILITY

Amnesty vs. PD 1160 (2006)

Can former DSWD Secretary Dinky Soliman apply for amnesty? How about columnist Randy David? (You are supposed to know the crimes or offenses ascribed to them as published in almost all newspapers for the past several months.) (2.5%)

SUGGESTED ANSWER:

Proclamation 1160, which amended Proclamation 724, applies only to offenses committed prior to 1999. Thus, their applications shall be ineffectual and useless.

General Lim and General Querubin of the Scout Rangers and Philippine Marines, respectively, were changed with conduct unbecoming an officer and a gentleman under the Articles of War. Can they apply for amnesty? (2.5%)

SUGGESTED ANSWER:

Proclamation 1160, which amended Proclamation 724, applies only to offenses committed prior to 1999. Thus, their applications shall be ineffectual and useless.

Amnesty; Crimes Covered (2006)

Under Presidential Proclamation No. 724, amending Presidential Proclamation No. 347, certain crimes are covered by the grant of amnesty. Name at least 5 of these crimes. (2.5%)

SUGGESTED ANSWER:

Crimes covered under Presidential Proclamation No. 724:

1. Coup d'etat,
2. Rebellion or insurrection;
3. Disloyalty of public officers or employees;
4. Inciting to rebellion or insurrection;
5. Conspiracy to commit rebellion or insurrection;
6. Proposal to commit rebellion or insurrection;
7. Sedition; Conspiracy to commit
8. Sedition; Inciting to
9. Sedition; Illegal Assembly;
10. Illegal Association;
11. Direct Assault;
12. Indirect Assault;
13. Resistance and disobedience to a person in authority;
14. Tumults and other disturbances;
15. Unlawful use of means of publications and unlawful utterrances;
16. Alarm and scandal;
17. Illegal Possession of firearms.

Extinction; Criminal & Civil Liabilities; Effects; Death of accused pending appeal (2004)

AX was convicted of reckless imprudence resulting in homicide. The trial court sentenced him to a prison term as well as to pay P150,000 as civil indemnity and damages. While his appeal was pending, AX met a fatal accident. He left a young widow, 2 children, and a million-peso estate. What is the effect, if any, of his death on his criminal as well as civil liability? Explain briefly. (5%)

SUGGESTED ANSWER:

The death of AX while his appeal from the judgment of the trial court is pending, extinguishes his criminal liability. The civil liability insofar as it arises from the crime and recoverable under the Revised Penal Code is also extinguished; but indemnity and damages may be recovered in a civil action if predicated on a source of obligation under Art. 1157, Civil Code, such as law, contracts, quasi-contracts and quasi-delicts, but not on the basis of delicts. *(People v. Bayotas, 236 SCRA 239).*

Civil indemnity and damages under the Revised Penal Code are recoverable only if the accused had been convicted with finality before he died.

Extinction; Criminal & Civil Liabilities; Effects; Death of Offended Party (2000)

For defrauding Lorna, Alma was charged before the Municipal Trial Court of Malolos, Bulacan. After a protracted trial, Alma was convicted. While the case was pending appeal in the Regional Trial Court of the same province, Lorna who was then suffering from breast cancer, died. Alma manifested to the court that with Lorna's death, her (Alma's) criminal and civil liabilities are now extinguished. Is Alma's contention correct? What if it were Alma who died, would it affect her criminal and civil liabilities? Explain. (3%)

SUGGESTED ANSWER:

No. Alma's contention is not correct. The death of the offended party does not extinguish the criminal liability of the offender, because the offense is committed against the State *[People vs. Misola, 87 Phil. 830, 833).* Hence, it follows that the civil liability of Alma based on the offense committed by her is not extinguished. The estate of Lorna can continue the case.

On the other hand, if it were Alma who died pending appeal of her conviction, her criminal liability shall be extinguished and therewith the civil liability under the Revised Penal Code (Art. 89, par. 1, RPC). However, the claim for civil indemnity may be instituted under the Civil Code (Art. 1157) if predicated on a source of obligation other than delict, such as law, contracts, quasi-contracts and quasi-delicts *(People vs. Bayotas 236 SCRA 239, G.R. 152007, September 2. 1994)*

Pardon vs. Amnesty (2006)

Enumerate the differences between pardon and amnesty. (2.5%)

SUGGESTED ANSWER:

a) PARDON includes any crime and is exercised individually by the President, while AMNESTY applies to classes of persons or communities who may be guilty of political offenses.

b) PARDON is exercised when the person is already convicted, while AMNESTY may be exercised even before trial or investigation.

c) PARDON looks forward and relieves the offender of the penalty of the offense for which he has been convicted; it does not work for the restoration of the rights to hold public office, or the right of suffrage, unless such rights are expressly restored by means of pardon, while AMNESTY looks backward and abolishes the offense and its effects, as if the person had committed no offense.

d) PARDON does not alter the fact that the accused is criminally liable as it produces only the extinction of the penalty, while AMNESTY removes the criminal liability of the offender because it obliterates every vestige of the crime.

e) PARDON being a private act by the President, must be pleaded and proved by the person pardoned, while AMNESTY which is a Proclamation of the Chief Executive with the concurrence of Congress is a public act of which the courts should take judicial notice.

Pardon; Effect; Civil Interdiction (2004)

TRY was sentenced to death by final judgment. But subsequently he was granted pardon by the President. The pardon was silent on the perpetual disqualification of TRY to hold any public office. After his pardon, TRY ran for office as Mayor of APP, his hometown. His opponent sought to disqualify him. TRY contended he is not disqualified because he was already pardoned by the President unconditionally. Is TRY'S contention correct? Reason briefly. (5%)

SUGGESTED ANSWER:

No, TRY's contention is not correct. Article 40 of the Revised Penal Code expressly provides that when the death penalty is not executed by reason of commutation or pardon, the accessory penalties of perpetual absolute disqualification and civil interdiction during thirty (30) years from the date of the sentence shall remain as effects thereof, unless such accessory penalties have been expressly remitted in the pardon. This is because pardon only excuses the convict from serving the sentence but does not relieve him of the effects of the conviction unless expressly remitted in the pardon.

Pardon; Effect; Reinstatement (1994)

Linda was convicted by the Sandiganbayan of estafa, through falsification of public document. She was sentenced accordingly and ordered to pay, among others, P5,000.00 representing the balance of the amount defrauded.

The case reached the Supreme Court which affirmed the judgment of conviction. During the pendency of Linda's motion for reconsideration in the said Court, the President extended to her an absolute pardon which she accepted.

By reason of such pardon, she wrote the Department of Finance requesting that she be restored to her former post as assistant treasurer, which is still vacant. The Department ruled that Linda may be reinstated to her former position without the necessity of a new appointment and directed the City Treasurer to see to it that the sum of P5,000.00 be satisfied. Claiming that she should not be made to pay P5,000.00, Linda appealed to the Office of the President.

The Office of the President dismissed the appeal and held that acquittal, not absolute pardon. Is the only ground for reinstatement to one's former position and that the absolute pardon does not exempt the culprit from payment of civil liability. Is Linda entitled to reinstatement?

SUGGESTED ANSWER:

No, Linda is not entitled to reinstatement to her former position inasmuch as her right thereto had been relinquished or forfeited by reason of her conviction. The absolute pardon merely extinguished her criminal liability, removed her disqualification, and restored her eligibility for appointment to that office. She has to re-apply for

such position and under the usual procedure required for a new appointment. Moreover, the pardon does not extinguish the civil liability arising from the crime.
(Monsanto vs.Factoran, Jr., 170 SCRA 191); see Art. 36, RPC)

Prescription of Crimes; Bigamy (1995)

Joe and Marcy were married in Batanes in 1955. After two years, Joe left Marcy and settled in Mindanao where he later met and married Linda on 12 June 1960. The second marriage was registered in the civil registry of Davao City three days after its celebration. On 10 October 1975 Marcy who remained in Batanes discovered the marriage of Joe to Linda. On 1 March 1976 Marcy filed a complaint for bigamy against Joe.

The crime of bigamy prescribed in fifteen years computed from the day the crime is discovered by the offended party, the authorities or their agents. Joe raised the defense of prescription of the crime, more than fifteen years having elapsed from the celebration of the bigamous marriage up to the filing of Marcy's complaint. He contended that the registration of his second marriage in the civil registry of Davao City was constructive notice to the whole world of the celebration thereof thus binding upon Marcy.

Has the crime of bigamy charged against Joe already prescribed? Discuss fully,

SUGGESTED ANSWER:

No. The prescriptive period for the crime of bigamy is computed from the time the crime was discovered by the offended party, the authorities or their agents. The principle of constructive notice which ordinarily applies to land or property disputes should not be applied to the crime of bigamy, as marriage is not property. Thus when Marcy filed a complaint for bigamy on 7 March 1976, it was well within the reglamentary period as it was barely a few months from the time of discovery on 10 October 1975. *(Sermonia vs. CA, 233 SCRA 155)*

Prescription of Crimes; Commencement (2000)

One fateful night in January 1990, while 5-year old Albert was urinating at the back of their house, he heard a strange noise coming from the kitchen of their neighbor and playmate, Ara. When he peeped inside, he saw Mina, Ara's stepmother, very angry and strangling the 5-year old Ara to death. Albert saw Mina carry the dead body of Ara, place it inside the trunk of her car and drive away. The dead body of Ara was never found. Mina spread the news in the neighborhood that Ara went to live with her grandparents in Ormoc City. For fear of his life, Albert did not tell anyone, even his parents and relatives, about what he witnessed. Twenty and a half (20 & 1/2) years after the incident, and right after his graduation in Criminology, Albert reported the crime to NBI authorities. The crime of homicide prescribes in 20 years. Can the state still prosecute Mina for the death of Ara despite the lapse of 20 & 1/2 years? Explain, (5%)

SUGGESTED ANSWER:

Yes, the State can still prosecute Mina for the death of Ara despite the lapse of 20 & 1/2 years. Under Article 91, RPC, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents. In the case at bar, the commission of the crime was known only to Albert, who was not the offended party nor an authority or an agent of an authority. It was discovered by the NBI authorities only when Albert revealed to them the commission of the crime. Hence, the period of prescription of 20 years for homicide commenced to run only from the time Albert revealed the same to the NBI authorities.

Prescription of Crimes; Commencement (2004)

OW is a private person engaged in cattle ranching. One night, he saw AM stab CV treacherously, then throw the dead man's body into a ravine. For 25 years, CVs body was never seen nor found; and OW told no one what he had witnessed. Yesterday after consulting the parish priest, OW decided to tell the authorities what he witnessed, and revealed that AM had killed CV 25 years ago. Can AM be prosecuted for murder despite the lapse of 25 years? Reason briefly. (5%)

SUGGESTED ANSWER:

Yes, AM can be prosecuted for murder despite the lapse of 25 years, because the crime has not yet prescribed and legally, its prescriptive period has not even commenced to run.

The period of prescription of a crime shall commence to run only from the day on which the crime has been discovered by the offended party, the authorities or their agents (Art. 91, Revised Penal Code). OW, a private person who saw the killing but never disclosed it, is not the offended party nor has the crime been discovered by the authorities or their agents.

Prescription of Crimes; Concubinage (2001)

On June 1, 1988, a complaint for concubinage committed in February 1987 was filed against Roberto in the Municipal Trial Court of Tanza, Cavite for purposes of preliminary investigation. For various reasons, it was only on July 3, 1998 when the Judge of said court decided the case by dismissing it for lack of jurisdiction since the crime was committed in Manila. The case was subsequently filed with the City Fiscal of Manila but it was dismissed on the ground that the crime had already prescribed. The law provides that the crime of concubinage prescribes in ten
(10) years. Was the dismissal by the fiscal correct? Explain, (5%)

SUGGESTED ANSWER:

No, the Fiscal's dismissal of the case on alleged prescription is not correct. The filing of the complaint with the Municipal Trial Court, although only for preliminary investigation, interrupted and suspended the period of prescription in as much as the jurisdiction of a court in a criminal case is determined by the allegations in the complaint or information, not by the result of proof.
(People vs. Galano. 75 SCRA 193)

Prescription of Crimes; False Testimony (1994)

Paolo was charged with homicide before the Regional Trial Court of Manila. Andrew, a prosecution witness, testified that he saw Paolo shoot Abby during their heated argument. While the case is still pending, the City Hall of Manila burned down and the entire records of the case were destroyed. Later, the records were reconstituted. Andrew was again called to the witness stand. This time he testified that his first testimony was false and the truth was he was abroad when the crime took place. The judge immediately ordered the prosecution of Andrew for giving a false testimony favorable to the defendant in a criminal case.

1 Will the case against Andrew prosper?

2 Paolo was acquitted. The decision became final on January 10, 1987. On June 18, 1994 a case of giving false testimony was filed against Andrew. As his lawyer, what legal step will you take?

SUGGESTED ANSWER:

1) Yes. ...

2) As lawyer of Andrew, I will file a motion to quash the Information on the ground of prescription. The crime of false testimony under Art. 180 has prescribed because Paolo, the accused in the principal case, was acquitted on January 10, 1987 and therefore the penalty prescribed for such crime is arresto mayor under Art. 180, par. 4, RPC.

Crimes punishable by arresto mayor prescribes in five (5) years (Art. 90, par. 3, RPC). But the case against Andrew was filed only on June 18, 1994, whereas the principal criminal case was decided with finality on January 10, 1987 and, thence the prescriptive period of the crime commenced to run. From January 10, 1987 to June 18, 1994 is more than five (5) years.

Prescription of Crimes; Simple Slander (1997)

A was charged in an information with the crime of grave oral defamation but after trial, the court found him guilty only of the offense of simple slander. He filed a motion for reconsideration contending that, under the law, the crime of simple slander would have prescribed in two months from commission, and since the information against him was filed more than four months after the alleged commission of the crime, the same had already prescribed.

The Solicitor General opposed the motion on two grounds: first, in determining the prescriptive period, the nature of the offense charged in the Information should be considered, not the crime proved; second, assuming that the offense had already prescribed, the defense was waived by the failure of A to raise it in a motion to quash. Resolve the motion for reconsideration.

SUGGESTED ANSWER:

The motion for reconsideration should be granted.-

a) The accused cannot be convicted of the offense of simple slander although it is necessarily included in the offense of grave slander charged in the information, because, the lesser offense had already prescribed at the time the information was filed *(People us. Rarang, (CA) 62 O.G. 6468; Francisco vs. CA, 122 SCRA 538; Magat vs. People. 201 SCRA 21)* otherwise prosecutors can easily circumvent the rule of prescription in light offenses by the simple expediment of filing a graver offense which includes such light offense.

b) While the general rule is the failure of an accused to file a motion to quash before he pleads to the complaint or information, shall be deemed a waiver of the grounds of a motion to quash, the exceptions to this are: (1) no offense was charged in the complaint or information; (2) lack of Jurisdiction; (3) extinction of the offense or penalty; and (4) double jeopardy. Since the ground invoked by the accused in his motion for reconsideration is extinction of the offense, then it can be raised even after plea. In fact, it may even be invoked on appeal
(People vs. Balagtas)

CIVIL LIABILITY

Civil liability; Effect of Acquittal (2000)

Name at least two exceptions to the general rule that in case of acquittal of the accused in a criminal case, his civil liability is likewise extinguished. (2%)

SUGGESTED ANSWER:

Exceptions to the rule that acquittal from a criminal case extinguishes civil liability, are: 1) When the civil action is based on obligations not
arising from the act complained of as a felony;
2) When acquittal is based on reasonable doubt or acquittal is on the ground that guilt has not been proven beyond reasonable doubt (Art. 29, New Civil Code);

3) Acquittal due to an exempting circumstance, like Insanity; 4) Where the court states in its Judgment that the case merely involves a civil obligation; 5) Where there was a proper reservation for the filing of a separate civil action; 6) In cases of independent civil actions provided for in Arts. 31, 32, 33 and 34 of the New Civil Code;

7) When the judgment of acquittal includes a declaration that the fact from which the civil liability might arise did not exist *(Sapiera vs. CA, 314 SCRA 370);*
8) Where the civil liability is not derived or based on the criminal act of which the accused is acquitted
(Sapiera vs. CA. 314 SCRA 370).

Civil liability; Effect of Acquittal (2000)

A was a 17-year old working student who was earning his keep as a cigarette vendor. B was driving a car along busy Espana Street at about 7:00 p.m. Beside B was C. The car stopped at an intersection because of the red signal of the traffic light. While waiting for the green signal, C beckoned A to buy some cigarettes. A approached the

car and handed two sticks of cigarettes to C. While the transaction was taking place, the traffic light changed to green and the car immediately sped off. As the car continued to speed towards Quiapo, A clung to the window of the car but lost his grip and fell down on the pavement. The car did not stop. A suffered serious injuries which eventually caused his death. C was charged with ROBBERY with HOMICIDE. In the end, the Court was not convinced with moral certainty that the guilt of C has been established beyond reasonable doubt and, thus, acquitted him on the ground of reasonable doubt. Can the family of the victim still recover civil damages in view of the acquittal of C? Explain. (5%)

SUGGESTED ANSWER:

Yes, as against C, A's family can still recover civil damages despite C's acquittal. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence {Art. 29, CC).

If A's family can prove the negligence of B by preponderance of evidence, the civil action for damages against B will prosper based on quasi-delict. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, about pre-existing contractual relation between the parties, is called a quasi-delict [Art. 2176, CC). This is entirely separate and distinct from civil liability arising from negligence under the Penal Code [Arts, 31, 2176, 2177, CC}.

Civil Liability; Subsidiary; Employers (1998)

Guy, while driving a passenger jeepney owned and operated by Max, bumped Demy, a pedestrian crossing the street. Demy sustained injuries which required medical attendance for three months. Guy was charged with reckless imprudence resulting to physical injuries. Convicted by the Metropolitan Trial Court. Guy was sentenced to suffer a straight penalty of three months of arresto mayor and ordered to indemnify Demy in the sum of P5,000 and to pay P1,000 as attorney's fees.

Upon finality of the decision, a writ of execution was served upon Guy, but was returned unsatisfied due to his insolvency. Demy moved for a subsidiary writ of execution against Max. The latter opposed the motion on-the ground that the decision made no mention of his subsidiary liability and that he was not impleaded in the case. How will you resolve the motion? [5%]

SUGGESTED ANSWER:

The motion is to be granted. Max as an employer of Guy and engaged in an industry (transportation business) where said employee is utilized, is subsidiarily civilly liable under Article 103 of the Revised Penal Code. Even though the decision made no mention of his subsidiary liability, the law violated (Revised Penal Code) itself mandates for such liability and Max is deemed to know it because ignorance of the law is never excused. And since his liability is not primary but only subsidiary in case his employee cannot pay; he need not be impleaded in the in the criminal case. It suffices that he was duly notified of the motion for issuance of a subsidiary writ of execution and thus given the opportunity to be heard.

Civil Liability; When Mandatory; Criminal Liability (2005)

The accused was found guilty of 10 counts of rape for having carnal knowledge with the same woman. In addition to the penalty of imprisonment, he was ordered to pay indemnity in the amount of P50,000.00 for each count. On appeal, the accused questions the award of civil indemnity for each count, considering that the victim is the same woman. How would you rule on the contention of the accused? Explain. (3%)

SUGGESTED ANSWER:

The contention is unmeritorious. Under the law, every person criminally liable is civilly liable. (Art. 100, Revised Penal Code) Since each count charges different felonious acts and ought to be punished differently, the concomitant civil indemnity ex delicto for every criminal act should be adjudged. Said civil indemnity is mandatory upon a finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations. *(People v. Jalosjos, G.R. Nos. 132875-76, November 16, 2001)*

Damages; Homicide; Temperate Damages (2006)

In a crime of homicide, the prosecution failed to present any receipt to substantiate the heirs' claim for an award of actual damages, such as expenses for the wake and burial. What kind of damages may the trial court award to them and how much? (5%)

SUGGESTED ANSWER:

The court may award temperate damages in the amount of twenty-five (P25,000.00) thousand pesos. Under jurisprudence, temperate damages is awarded in homicide when no sufficient proof of actual damages is offered or if the actual damages proven is less than twenty-five thousand (P25,000) *(People v. Salona, G.R. No. 151251, May 19, 2004).*

Crimes Against National Security and the Law of Nations

Piracy in the High Seas & Qualified Piracy (2006)

While the S.S. Nagoya Maru was negotiating the sea route from Hongkong towards Manila, and while still 300 miles from Aparri, Cagayan, its engines malfunctioned. The Captain ordered the ship to stop for emergency repairs lasting for almost 15 hours. Due to exhaustion, the officers and crew fell asleep. While the ship was anchored, a motorboat manned by renegade Ybanags from Claveria, Cagayan, passed by and took advantage of the situation. They cut the ship's engines and took away several heavy crates of electrical equipment and loaded them in their motorboat. Then they left hurriedly

towards Aparri. At daybreak, the crew found that a robbery took place. They radioed the Aparri Port Authorities resulting in the apprehension of the culprits.

What crime was committed? Explain. (2.5%)

SUGGESTED ANSWER:

Piracy in the high seas was committed by the renegade Ybanags. The culprits, who are neither members of the complement nor passengers of the ship, seized part of the equipment of the vessel while it was three hundred miles away from Aparri, Cagayan (Art. 122, Revised Penal Code).

Supposing that while the robbery was taking place, the culprits stabbed a member of the crew while sleeping. What crime was committed? Explain. (2.5%)

SUGGESTED ANSWER:

The crime committed is qualified piracy, because it was accompanied by physical injuries/homicide. The culprits stabbed a member of the crew while sleeping (Art. 123, Revised Penal Code).

Crimes Against the Fundamental Law of the State

Violation of Domicile vs. Trespass to Dwelling (2002)

What is the difference between violation of domicile and trespass to dwelling? (2%)

SUGGESTED ANSWER:

The differences between violation of domicile and trespass to dwelling are; 1) The offender in violation of domicile is a public

officer acting under color of authority; in trespass to dwelling, the offender is a private person or public officer acting in a private capacity.

2) Violation of domicile is committed in 3 different ways: (1) by entering the dwelling of another against the will of the latter; (2) searching papers and other effects inside the dwelling without the previous consent of the owner; or (3) refusing to leave the premises which he entered surreptitiously, after being required to leave the premises.

3) Trespass to dwelling is committed only in one way; that is, by entering the dwelling of another against the express or implied will of the latter.

Crimes Against Public Order

Art 134; Rebellion; Politically Motivated; Committed by NPA Members (1998)

On May 5, 1992, at about 6:00 a.m., while Governor Alegre of Laguna was on board his car traveling along the National Highway of Laguna, Joselito and Vicente shot him on the head resulting in his instant death. At that time, Joselito and Vicente were members of the liquidation squad of the New People's Army and they killed the governor upon orders of their senior officer. Commander Tiago. According to Joselito and Vicente, they were ordered to kill Governor Alegre because of his corrupt practices. If you were the prosecutor, what crime will you charge Joselito and Vicente? [5%]

SUGGESTED ANSWER:

If I were the prosecutor, I would charge Joselito and Vicente with the crime of rebellion, considering that the killers were members of the liquidation squad of the New People's Army and the killing was upon orders of their commander; hence, politically-motivated. This was the ruling in *People vs. Avila, 207 SCRA 1568* involving identical facts which is a movement taken judicial notice of as engaged in rebellion against the Government.

ALTERNATIVE ANSWER:

If I were the prosecutor, I would charge Joselito and Vicente for the crime of murder as the purpose of the killing was because of his "corrupt practices ", which does not appear to be politically motivated. There is no indication as to how the killing would promote or further the objective of the New Peoples Army. The killing is murder because it was committed with treachery.

ALTERNATIVE ANSWER:

The crime should be rebellion with murder considering that Art. 135 of the Revised Penal Code has already been amended by Rep. Act No. 6968, deleting from said Article, common crimes which used to be punished as part and parcel of the crime of rebellion. The ruling in *People vs. Hernandez, 99 Phil. 515 (1994),* that rebellion may not be completed with common crimes committed in furtherance thereof, was because the common crimes were then penalized in Art. 135 together with the rebellion, with one penalty and Art. 48 of the Rev. Penal Code cannot be applied. Art. 135 of said Code remained exactly the same when the case of Enrile vs, Salazar, 186 SCRA 217 (1990) was resolved. Precisely for the reason that Art. 48 cannot apply because the common crimes were punished as part of rebellion in Art. 135, that this Article was amended, deleting the common crimes therefrom. That the common crimes were deleted from said Article, demonstrates a clear legislative intention to treat the common crimes as distinct from rebellion and remove the legal impediment to the application of Art.

48. It is noteworthy that in *Enrile vs. Salazar (supra)* the Supreme Court said these:

> "There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered as absorbed thereby, so that if it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name. The Court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is purely with in its province,"
>
> And significantly the said amendment to Art. 135 of the Rev. Penal Code was made at around the time the ruling in Salazar was handled down, obviously to

neutralize the Hernandez and the Salazar rulings. The amendment was sort of a rider to the coup d'etat law, Rep. Act No 6968.

Art 134-A: Coup d' etat & Rape; Frustrated (2005)

Taking into account the nature and elements of the felonies of coup d' etat and rape, may one be criminally liable for frustrated coup d' etat or frustrated rape? Explain. (2%)

SUGGESTED ANSWER:

No, one cannot be criminally liable for frustrated coup d' etat or frustrated rape because in coup d' etat the mere attack directed against the duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power would consummate the crime. The objective may not be to overthrow the government but only to destabilize or paralyze the government through the seizure of facilities and utilities essential to the continued possession and exercise of governmental powers.

On the other hand, in the crime of rape there is no frustrated rape it is either attempted or consummated rape. If the accused who placed himself on top of a woman, raising her skirt and unbuttoning his pants, the endeavor to have sex with her very apparent, is guilty of Attempted rape. On the other hand, entry on the labia or lips of the female organ by the penis, even without rupture of the hymen or laceration of the vagina, consummates the crime of rape. More so, it has long abandoned its "stray" decision in *People vs. Erina 50 Phil 998* where the accused was found guilty of Frustrated rape.

Art 134-A; Coup d'etat (2002)

If a group of persons belonging to the armed forces makes a swift attack, accompanied by violence, intimidation and threat against a vital military installation for the purpose of seizing power and taking over such installation, what crime or crimes are they guilty of? (3%)

SUGGESTED ANSWER:

The perpetrators, being persons belonging to the Armed Forces, would be guilty of the crime of coup d'etat, under Article 134-A of the Revised Penal Code, as amended, because their attack was against vital military installations which are essential to the continued possession and exercise of governmental powers, and their purpose is to seize power by taking over such installations.

B. If the attack is quelled but the leader is unknown, who shall be deemed the leader thereof? (2%)

SUGGESTED ANSWER:

The leader being unknown, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts, on behalf of the group shall be deemed the leader of said coup d'etat (Art 135, R.P.C.)

Art 134-A; Coup d'etat; New Firearms Law (1998)

1. How is the crime of coup d'etat committed? [3%]
2. Supposing a public school teacher participated in a coup d'etat using an unlicensed firearm. What crime or crimes did he commit? [2%]

SUGGESTED ANSWER:

1. The crime of coup d'etat is committed by a swift attack, accompanied by violence, intimidation, threat, strategy or stealth against the duly constituted authorities of the Republic of the Philippines, military camps and installations, communication networks, public utilities and facilities needed for the exercise and continued possession of power, carried out singly or simultaneously anywhere in the Philippines by persons belonging to the military or police or holding public office, with or without civilian support or participation, for the purpose of seizing or diminishing state power. (Art 134-A, RPC).

2. The public school teacher committed only coup d'etat for his participation therein. His use of an unlicensed firearm is absorbed in the coup d'etat under the new firearms law (Rep. Act No. 8294).

Art 136; Conspiracy to Commit Rebellion (1994)

VC, JG. GG and JG conspired to overthrow the Philippine Government. VG was recognized as the titular head of the conspiracy. Several meetings were held and the plan was finalized. JJ, bothered by his conscience, confessed to Father Abraham that he, VG, JG and GG have conspired to overthrow the government. Father Abraham did not report this information to the proper authorities. Did Father Abraham commit a crime? If so, what crime was committed? What is his criminal liability?

SUGGESTED ANSWER:

No, Father Abraham did not commit a crime because the conspiracy involved is one to commit rebellion, not a conspiracy to commit treason which makes a person criminally liable under Art 116, RFC. And even assuming that it will fall as misprision of treason, Father Abraham is exempted from criminal liability under Art. 12, par. 7, as his failure to report can be considered as due to "insuperable cause", as this involves the sanctity and inviolability of a confession.

Conspiracy to commit rebellion results in criminal liability to the co-conspirators, but not to a person who learned of such and did not report to the proper authorities *(US vs. Vergara, 3 Phil. 432; People vs. Atienza. 56 Phil. 353).*

Art 148; Direct Assault vs. Resistance & Disobedience (2001)

A, a teacher at Mapa High School, having gotten mad at X, one of his pupils, because of the latter's throwing paper clips at his classmates, twisted his right ear. X went out of the classroom crying and proceeded home located at the back of the school. He reported to his parents Y and Z what A had done to him. Y and Z immediately proceeded to the school building and because they were running and talking in loud voices, they were seen by the

barangay chairman, B, who followed them as he suspected that an untoward incident might happen. Upon seeing A inside the classroom, X pointed him out to his father, Y, who administered a fist blow on A, causing him to fall down. When Y was about to kick A, B rushed towards Y and pinned both of the latter's arms. Seeing his father being held by B, X went near and punched B on the face, which caused him to lose his grip on Y. Throughout this incident, Z shouted words of encouragement at Y, her husband, and also threatened to slap A. Some security guards of the school arrived, intervened and surrounded X, Y and Z so that they could be investigated in the principal's office. Before leaving, Z passed near A and threw a small flower pot at him but it was deflected by B. a) What, if any, are the respective criminal liability of X Y and Z? (6%) b) Would your answer be the same if B were a barangay tanod only? (4%)

SUGGESTED ANSWER:

a) X is liable for Direct Assault only, assuming the physical injuries inflicted on B, the Barangay Chairman, to be only slight and hence, would be absorbed in the direct assault. A Barangay Chairman is a person in authority (Art. 152, RPC) and in this case, was performing his duty of maintaining peace and order when attacked.

Y is liable for the complex crimes of Direct Assault With Less Serious Physical Injuries for the fist blow on A, the teacher, which caused the latter to fall down. For purposes of the crimes in Arts. 148 and 151 of the Revised Penal Code, a teacher is considered a person in authority, and having been attacked by Y by reason of his performance of official duty, direct assault is committed with the resulting less serious physical injuries completed. Z, the mother of X and wife of Y may only be liable as an accomplice to the complex crimes of direct assault with less serious physical injuries committed by Y. Her participation should not be considered as that of a coprincipal, since her reactions were only incited by her relationship to X and Y. as the mother of X and the wife of Y.

b) If B were a Barangay Tanod only, the act of X of laying hand on him, being an agent of a person in authority only, would constitute the crime of Resistance and Disobedience under Article 151, since X, a high school pupil, could not be considered as having acted out of contempt for authority but more of helping his father get free from the grip of B. Laying hand on an agent of a person in authority is not ipso facto direct assault, while it would always be direct assault if done to a person in authority in defiance to the latter is exercise of authority.

Art 148; Direct Assault; Teachers & Professors (2002)

A, a lady professor, was giving an examination. She noticed B, one of the students, cheating. She called the student's attention and confiscated his examination booklet, causing embarrassment to him. The following day, while the class was going on, the student, B, approached A and, without any warning, slapped her. B would have inflicted further injuries on A had not C, another student, come to A's rescue and prevented B from continuing his attack. B turned his ire on C and punched the latter. What crime or crimes, if any, did B commit? Why? (5%)

SUGGESTED ANSWER:

B committed two (2) counts of direct assault: one for slapping the professor, A, who was then conducting classes and thus exercising authority; and another one for the violence on the student C, who came to the aid of the said professor.

By express provision of Article 152, in relation to Article 148 of the Revised Penal Code, teachers and professors of public or duly recognized private schools, colleges and universities in the actual performance of their professional duties or on the occasion of such performance are deemed persons in authority for purposes of the crimes of direct assault and of resistance and disobedience in Articles 148 and 151 of said Code. And any person who comes to the aid of persons in authority shall be deemed an agent of a person in authority. Accordingly, the attack on C is, in the eyes of the law, an attack on an agent of a person in authority, not just an attack on a student.

Art 148; Persons in Authority/Agents of Persons in Authority (2000)

Who are deemed to be persons in authority and agents of persons in authority? (3%)

SUGGESTED ANSWER:

Persons in authority are persons directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission. Barrio captains and barangay chairmen are also deemed persons in authority. (Article 152, RPC)

Agents of persons in authority are persons who by direct provision of law or by election or by appointment by competent authority, are charged with maintenance of public order, the protection and security of life and property, such as barrio councilman, barrio policeman, barangay leader and any person who comes to the aid of persons in authority (Art. 152, RPC),

In applying the provisions of Articles 148 and 151 of the Rev. Penal Code, teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance, shall be deemed persons in authority. (P.D. No. 299, and Batas Pambansa Blg. 873).

Art 156; Delivery of Prisoners from Jail (2002)

A, a detention prisoner, was taken to a hospital for emergency medical treatment. His followers, all of whom were armed, went to the hospital to take him away or

help him escape. The prison guards, seeing that they were outnumbered and that resistance would endanger the lives of other patients, deckled to allow the prisoner to be taken by his followers. What crime, if any, was committed by A's followers? Why? (3%)

SUGGESTED ANSWER:

A's followers shall be liable as principals in the crime of delivery of prisoner from Jail (Art. 156, Revised Penal Code).

The felony is committed not only by removing from any jail or penal establishment any person confined therein but also by helping in the escape of such person outside of said establishments by means of violence, intimidation, bribery, or any other means.

Art 157; Evasion of Service of Sentence (1998)

Manny killed his wife under exceptional circumstances and was sentenced by the Regional Trial Court of Dagupan City to suffer the penalty of destierro during which he was not to enter the city.

While serving sentence, Manny went to Dagupan City to visit his mother. Later, he was arrested in Manila.

1. Did Manny commit any crime? [3%]
2. If so, where should he be prosecuted? [2%]

SUGGESTED ANSWER:

1. Yes. Manny committed the crime of evasion of service of sentence when he went to Dagupan City, which he was prohibited from entering under his sentence of destierro.

A sentence imposing the penalty of destierro is evaded when the convict enters any of the place/places he is prohibited from entering under the sentence or come within the prohibited radius. Although destierro does not involve imprisonment, it is nonetheless a deprivation of liberty. (People vs. Abilong. 82 Phil. 172).

2. Manny may be prosecuted in Dagupan City or in Manila where he was arrested. This is so because evasion of service of sentence is a continuing offense, as the convict is a fugitive from justice in such case. *(Parulan vs. Dir. of Prisons, L-28519, 17 Feb. 1968)*

Art. 134; Rebellion vs. Coup d'etat (2004)

Distinguish clearly but briefly: Between rebellion and coup d'etat, based on their constitutive elements as criminal offenses.

SUGGESTED ANSWER:

REBELLION is committed when a multitude of persons rise publicly in arms for the purpose of overthrowing the duly constituted government, to be replaced by a government of the rebels. It is carried out by force and violence, but need not be participated in by any member of the military, national police or any public officer.

COUP D'ETAT is committed when members of the military, Philippine National Police, or public officer, acting as principal offenders, launched a swift attack thru strategy, stealth, threat, violence or intimidation against duly constituted authorities of the Republic of the Philippines, military camp or installation, communication networks, public facilities or utilities needed for the exercise and continued possession of governmental powers, for the purpose of seizing or diminishing state powers.

Unlike rebellion which requires a public uprising, coup d'etat may be carried out singly or simultaneously and the principal offenders must be members of the military, national police or public officer, with or without civilian support. The criminal objective need not be to overthrow the existing government but only to destabilize or paralyze the existing government.

Complex Crime; Direct Assault with murder (2000)

Because of the approaching town fiesta in San Miguel, Bulacan, a dance was held in Barangay Camias. A, the Barangay Captain, was invited to deliver a speech to start the dance. While A was delivering his speech. B, one of the guests, went to the middle of the dance floor making obscene dance movements, brandishing a knife and challenging everyone present to a fight. A approached B and admonished him to keep quiet and not to disturb the dance and peace of the occasion. B, instead of heeding the advice of A, stabbed the latter at his back twice when A turned his back to proceed to the microphone to continue his speech. A fell to the ground and died. At the time of the incident A was not armed. What crime was committed? Explain. (2%)

SUGGESTED ANSWER:

The complex crime of direct assault with murder was committed. A, as a Barangay Captain, is a person in authority and was acting in an official capacity when he tried to maintain peace and order during the public dance in the Barangay, by admonishing B to keep quiet and not to disturb the dance and peace of the occasion. When B, instead of heeding A's advice, attacked the latter, B acted in contempt and lawless defiance of authority constituting the crime of direct assault, which characterized the stabbing of A. And since A was stabbed at the back when he was not in a position to defend himself nor retaliate, there was treachery in the stabbing. Hence, the death caused by such stabbing was murder and having been committed with direct assault, a complex crime of direct assault with murder was committed by B.

Art 148; Direct Assault with murder (1995)

Pascual operated a rice thresher in Barangay Napnud where he resided. Renato, a resident of the neighboring Barangay Guihaman, also operated a mobile rice thresher which he often brought to Barangay Napnud to thresh the palay of the farmers there. This was bitterly resented by Pascual, one afternoon Pascual, and his two sons confronted Renato and his men who were operating their mobile rice thresher along a feeder road in Napnud. A heated argument ensued. A barangay captain who was

fetched by one of Pascual's men tried to appease Pascual and Renato to prevent a violent confrontation. However, Pascual resented the intervention of the barangay captain and hacked him to death. What crime was committed by Pascual? Discuss fully.

SUGGESTED ANSWER:

Pascual committed the complex crime of homicide with assault upon a person in authority (Arts. 148 and 249 in relation to Art, 48, RPC). A barangay chairman, is in law (Art. 152), a person in authority and if he is attacked while in the performance of his official duties or on the occasion thereof the felony of direct assault is committed.

Art. 48, RPC, on the other hand, provides that if a single act produces two or more grave or less grave felonies, a complex crime is committed. Here, the single act of the offender in hacking the victim to death resulted in two felonies, homicide which is grave and direct assault which is less grave.

Crimes against Public Interest

False Notes; Illegal Possession (1999)

1 Is mere possession of false money bills punishable under Article 168 of the Revised Penal Code? Explain. (3%)

2 The accused was caught in possession of 100 counterfeit P20 bills. He could not explain how and why he possessed the said bills. Neither could he explain what he intended to do with the fake bills. Can he be held criminally liable for such possession? Decide. (3%}

SUGGESTED ANSWER:

1 No. Possession of false treasury or bank note alone without an intent to use it, is not punishable. But the circumstances of such possession may indicate intent to utter, sufficient to consummate the crime of illegal possession of false notes.

2 Yes. Knowledge that the note is counterfeit and intent to use it may be shown by the conduct of the accused. So, possession of 100 false bills reveal: (a) knowledge that the bills are fake; and (b) intent to utter the same.

False Testimony (1994)

Paolo was charged with homicide before the Regional Trial Court of Manila. Andrew, a prosecution witness, testified that he saw Paolo shoot Abby during their heated argument. While the case is still pending, the City Hall of Manila burned down and the entire records of the case were destroyed. Later, the records were reconstituted. Andrew was again called to the witness stand. This time he testified that his first testimony was false and the truth was he was abroad when the crime took place. The judge immediately ordered the prosecution of Andrew for giving a false testimony favorable to the defendant in a criminal case. 1.] Will the case against Andrew prosper? 2.] Paolo was acquitted. The decision became final on

> January 10, 1987. On June 18, 1994 a case of giving false testimony was filed against Andrew. As his lawyer, what legal step will you take?

SUGGESTED ANSWER:

1) Yes. For one to be criminally liable under Art. 181, RFC, it is not necessary that the criminal case where Andrew testified is terminated first. It is not even required of the prosecution to prove which of the two statements of the witness is false and to prove the statement to be false by evidence other than the contradictory statements *(People vs. Arazola, 13 Court of Appeals Report, 2nd series, p. 808).*

2) As lawyer of Andrew, I will file a motion to quash the Information on the ground of prescription. The crime of false testimony under Art. 180 has prescribed because Paolo, the accused in the principal case, was acquitted on January 10, 1987 and therefore the penalty prescribed for such crime is arresto mayor under Art. 180, par. 4, RPC.

Crimes punishable by arresto mayor prescribes in five (5) years (Art. 90, par. 3, RPC). But the case against Andrew was filed only on June 18, 1994, whereas the principal criminal case was decided with finality on January 10, 1987 and, thence the prescriptive period of the crime commenced to run. From January 10, 1987 to June 18, 1994 is more than five (5) years.

Falsification; Presumption of Falsification (1999)

A falsified official or public document was found in the possession of the accused. No evidence was introduced to show that the accused was the author of the falsification. As a matter of fact, the trial court convicted the accused of falsification of official or public document mainly on the proposition that "the only person who could have made the erasures and the superimposition mentioned is the one who will be benefited by the alterations thus made" and that "he alone could have the motive for making such alterations".

Was the conviction of the accused proper although the conviction was premised merely on the aforesaid ratiocination? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes, the conviction is proper because there is a presumption in law that the possessor and user of a falsified document is the one who falsified the same.

Forgery & Falsification (1999)

How are "forging" and "falsification" committed? (3%)

SUGGESTED ANSWER:

FORGING or forgery is committed by giving to a treasury or bank note or any instrument payable to bearer or to order the appearance of a true and genuine

document; or by erasing, substituting, counterfeiting, or altering by any means the figures, letters, words or signs contained therein.

FALSIFICATION, on the other hand, is committed by:
1 Counterfeiting or imitating any handwriting, signature or rubric;
2 Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3 Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4 Making untruthful statements in a narration of facts;
5 Altering true dates;
6 Making any alteration or intercalation in a genuine document which changes its meaning;
7 Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8 Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

Grave Scandal (1996)

Pia, a bold actress living on top floor of a plush condominium in Makati City sunbathed naked at its penthouse every Sunday morning. She was unaware that the business executives holding office at the adjoining tall buildings reported to office every Sunday morning and, with the use of powerful binoculars, kept on gazing at her while she sunbathed. Eventually, her sunbathing became the talk of the town. 1) What crime, if any, did Pia commit? Explain, 2) What crime, if any, did the business executives commit? Explain.

SUGGESTED ANSWER:

1) Pia did not commit a crime, the felony closest to making Pia criminally liable is Grave Scandal, but then such act is not to be considered as highly scandalous and offensive against decency and good customs. In the first place, it was not done in a public place and within public knowledge or view. As a matter of fact it was discovered by the executives accidentally and they have to use binoculars to have public and full view of Pia sunbathing in the nude.

2) The business executives did not commit any crime. Their acts could not be acts of lasciviousness [as there was no overt lustful act), or slander, as the eventual talk of the town, resulting from her sunbathing, is not directly imputed to the business executives, and besides such topic is not intended to defame or put Pia to ridicule.

Perjury (1996)

Sisenando purchased the share of the stockholders of Estrella Corporation in two installments, making him the majority stockholder thereof and eventually, its president. Because the stockholders who sold their stocks failed to comply with their warranties attendant to the sale, Sisenando withheld payment of the second installment due on the shares and deposited the money in escrow instead, subject to release once said stockholders comply with their warranties. The stockholders concerned, in turn, rescinded the sale in question and removed Sisenando from the Presidency of the Estrella Corporation, Sisenando then filed a verified complaint for damages against said stockholders in his capacity as president and principal stockholder of Estrella Corporation. In retaliation, the stockholders concerned, after petitioning the Securities and Exchange Commission to declare the rescission valid, further filed a criminal case for perjury against Sisenando, claiming that the latter perjured himself when he stated under oath in the verification of his complaint for damages that he is the President of the Estrella Corporation when in fact he had already been removed as such. Under the facts of the case, could Sisenando be held liable for perjury? Explain.

SUGGESTED ANSWER:

No, Sisenando may not be held liable for perjury because It cannot be reasonably maintained that he willfully and deliberately made an assertion of a falsehood when he alleged in the complaint that he is the President of the Corporation, obviously, he made the allegation on the premise that his removal from the presidency is not valid and that is precisely the issue brought about by his complaint to the SEC. It is a fact that Sisenando has been the President of the corporation and it is from that position that the stockholders concerned purportedly removed him, whereupon he filed the complaint questioning his removal. There is no willful and deliberate assertion of a falsehood which is a requisite of perjury.

Perjury (1997)

A, a government employee, was administratively charged with immorality for having an affair with B, a coemployee in the same office who believed him to be single. To exculpate himself, A testified that he was single and was willing to marry B, He induced C to testify and C did testify that B was single. The truth, however, was that A had earlier married D, now a neighbor of C. Is A guilty of perjury? Are A and C guilty of subordination of perjury?

SUGGESTED ANSWER:

No. A is not guilty of perjury because the willful falsehood asserted by him is not material to the charge of immorality. Whether A is single or married, the charge of immorality against him as a government employee could proceed or prosper. In other words, A's civil status is not a defense to the charge of immorality, hence, not a material matter that could influence the charge.

There is no crime of subornation of perjury. The crime is now treated as plain perjury with the one inducing another as the principal inducement, and the latter, as principal by direct participation *(People vs. Podol 66 Phil. 365)*. Since in this case A cannot be held liable for perjury, the matter that he testified to being immaterial, he cannot therefore be held responsible as a principal by inducement when he induced C to testify on his status. Consequently, C is not liable as principal by direct participation in perjury, having testified on matters not material to an administrative case.

Perjury (2005)

Al Chua, a Chinese national, filed a petition under oath for naturalization, with the Regional Trial Court of Manila. In his petition, he stated that he is married to Leni Chua; that he is living with her in Sampaloc, Manila; that he is of good moral character; and that he has conducted himself in an irreproachable manner during his stay in the Philippines. However, at the time of the filing of the petition, Leni Chua was already living in Cebu, while Al was living with Babes Toh in Manila, with whom he has an amorous relationship. After his direct testimony, Al Chua withdrew his petition for naturalization. What crime or crimes, if any, did Al Chua commit? Explain. (5%)

SUGGESTED ANSWER:

Al Chua committed perjury. His declaration under oath for naturalization that he is of good moral character and residing at Sampaloc, Manila are false. This information is material to his petition for naturalization. He committed perjury for this willful and deliberate assertion of falsehood which is contained in a verified petition made for a legal purpose. *(Choa v. People, G.R. No. 142011, March 14, 2003)*

Crimes Committed by Public Officers

Bribery & Corruption of Public Official (2001)

Deputy Sheriff Ben Rivas received from the RTC Clerk of Court a Writ of Execution in the case of Ejectment filed by Mrs. Maria Estrada vs. Luis Ablan. The judgment being in favor of Estrada, Rivas went to her lawyer's office where he was given the necessary amounts constituting the sheriffs fees and expenses for execution in the total amount of P550.00, aside from P2,000.00 in consideration of prompt enforcement of the writ from Estrada and her lawyer. The writ was successfully enforced. a) What crime, if any, did the sheriff commit? (3%) b) Was there any crime committed by Estrada and her lawyer and if so, what crime? (2%)

SUGGESTED ANSWER:

a) The sheriff committed the crime of Direct Bribery under the second paragraph of Article 210, Revised Penal Code, since the P2,000 was received by him "in consideration" of the prompt enforcement of the writ of execution which is an official duty of the sheriff to do.

ALTERNATIVE ANSWER;

a) On the premise that even without the P2,000, Sheriff Ben Rivas had to carry out the writ of execution and not that he would be implementing the writ only because of the P2,000.00, the receipt of the amount by said sheriff may be regarded as a gift received by reason of his office and not as a "consideration" for the performance of an official duty; hence, only indirect Bribery would be committed by said sheriff.

b) On the part of the plaintiff and her lawyer as giver of the bribe-money, the crime is Corruption of Public Officials under Article 212, Revised Penal Code.

Direct Bribery: Infidelity in the Custody of Documents (2005)

During a PNP buy-bust operation, Cao Shih was arrested for selling 20 grams of methamphetamine hydrochloride (shabu) to a poseur-buyer. Cao Shih, through an intermediary, paid Patrick, the Evidence Custodian of the PNP Forensic Chemistry Section, the amount of P500,000.00 in consideration for the destruction by Patrick of the drug. Patrick managed to destroy the drug. State with reasons whether Patrick committed the following crimes: (7%) 1.] **Direct Bribery**;

SUGGESTED ANSWER:

Patrick committed the crimes of Direct Bribery and Infidelity in the Custody of Documents. When a public officer is called upon to perform or refrain from performing an official act in exchange for a gift, present or consideration given to him (Art. 210, Revised Penal Code), the crime committed is direct bribery. Secondly, he destroyed the shabu which is an evidence in his official custody, thus, constituting infidelity in the custody of documents under Art. 226 of the Revised Penal Code.

2.] Indirect bribery;

SUGGESTED ANSWER:

Indirect bribery was not committed because he did not receive the bribe because of his office but in consideration of a crime in connection with his official duty.

3.] Section 3(e) of RA 3019 (Anti-Graft and Corrupt Practices Act);

SUGGESTED ANSWER:

See. 3(e), R.A. No. 8019 was not committed because there was no actual injury to the government. When there is no specific quantified injury, violation is not committed. *(Garcia-Rueda vs Amor, et al., G.R. No. 116938, September 20, 2001)*

4.] Obstruction of Justice under PD 1829;

SUGGESTED ANSWER:

Patrick committed the crime of obstruction of justice although the feigner penalty imposable on direct bribery

or infidelity in the custody of documents shall be imposed. Sec. 1 of P.D. No. 1829 refers merely to the imposition of the higher penalty and does not preclude prosecution for obstruction of justice, even if the same not constitute another offense.

ALTERNATIVE ANSWER:

Obstruction of Justice is not committed in this case, because the act of destroying the evidence in his custody is already penalized by another law which imposes a higher penalty. (Sec. 1, P.I). No. 1829)

Jurisdiction; Impeachable Public Officers (2006)

Judge Rod Reyes was appointed by former President Fidel Ramos as Deputy Ombudsman for the Visayas for a term of 7 years commencing on July 5,1995. Six months thereafter, a lady stenographer filed with the Office of the Ombudsman a complaint for acts of lasciviousness and with the Supreme Court a petition for disbarment against him. Forthwith, he filed separate motions to dismiss the complaint for acts of lasciviousness and petition for disbarment, claiming lack of jurisdiction over his person and office. Are both motions meritorious? (5%)

SUGGESTED ANSWER:

The motion to dismiss the complaint of the Deputy Ombudsman for the acts of lasciviousness should be denied as only the Ombudsman is included in the list of impeachable officers found in Article XI of the 1987 Constitution. Therefore, the Sandiganbayan has jurisdiction over his prosecution *(Office of the Ombudsman vs. CA, G.R. 146486, March 4, 2005)*. Likewise, the Supreme Court has jurisdiction over the petition for disbarment, as he is a member of the bar. His motion to dismiss should be denied (See Rule 139 and 139 of the Rules of Court).

Malversation (1994)

Randy, an NBI agent, was issued by the NBI an armalite rifle (Ml6) and a Smith and Wesson Revolver. Cal. 38. After a year, the NBI Director made an inspection of all the firearms issued. Randy, who reported for work that morning, did not show up during the inspection. He went on absence without leave (AWOL). After two years, he surrendered to the NBI the two firearms issued to him. He was charged with malversation of government property before the Sandiganbayan.

Randy put up the defense that he did not appropriate the armalite rifle and the revolver for his own use, that the delay in accounting for them does not constitute conversion and that actually the firearms were stolen by his friend, Chiting. Decide the case.

SUGGESTED ANSWER:

Randy is guilty as charged under Art. 217, RPC. He is accountable for the firearms they issued to him in his official capacity. The failure of Randy to submit the firearms upon demand created the presumption that he converted them for his own use. Even if there is no direct evidence of misappropriation, his failure to account for the government property is enough factual basis for a finding of malversation. Indeed, even his explanation that the guns were stolen is incredible. For if the firearms were actually stolen, he should have reported the matter immediately to the authorities. *(People vs. Baguiran , 20 SCRA 453; Felicilda us. Grospe, GR No. 10294, July 3, 1992)*

Malversation (1999)

What constitutes the crime of malversation of public funds or property? (2%)

SUGGESTED ANSWER:

Malversation of public funds or property is committed by any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, (Art, 217, RPC)

Malversation (1999)

A Municipal Treasurer, accountable for public funds or property, encashed with public funds private checks drawn in favor of his wife. The checks bounced, the drawer not having enough cash in the drawee bank. The Municipal Treasurer, in encashing private checks from public funds, violated regulations of his office. Notwithstanding restitution of the amount of the checks, can the Municipal Treasurer nevertheless be criminally liable? What crime did he commit? Explain. (2%)

SUGGESTED ANSWER:

Yes, notwithstanding the restitution of the amount of the check, the Municipal Treasurer will be criminally liable as restitution does not negate criminal liability although it may be considered as a mitigating circumstance similar or analogous to voluntary surrender. *(People vs. Velasquez, 73 Phil 98)*, He will be criminally liable for malversation. However, if the restitution was made immediately, under vehement protest against an imputation of malversation and without leaving the office, he may not be criminally liable.

Malversation (2001)

Alex Reyes, together with Jose Santos, were former warehousemen of the Rustan Department Store. In 1986, the PCGG sequestered the assets, fund and properties of the owners-incorporators of the store, alleging that they constitute "Ill-gotten wealth" of the Marcos family. Upon their application, Reyes and Santos were appointed as fiscal agents of the sequestered firm and they were given custody and possession of the sequestered building and its contents, including various vehicles used in the firm's operations. After a few months, an inventory was conducted and it was discovered that two (2) delivery vans were missing. After demand was made upon them, Reyes and Santos failed to give any satisfactory explanation why the vans were missing or to turn them over to the PCGG; hence, they were charged with Malversation of Public Property. During the trial, the two

accused claimed that they are not public accountable officers and, if any crime was committed, it should only be Estafa under Art. 315, par. l(b) of the Revised Penal Code. What is the proper offense committed? State the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

The proper offense committed was Malversation of Public Property, not estafa, considering that Reyes and Santos, upon their application, were constituted as "fiscal agents" of the sequestered firm and were "given custody and possession" of the sequestered properties, including the delivery vans which later they could not account for. They were thus made the depositary and administrator of properties deposited by public authority and hence, by the duties of their office/position, they are accountable for such properties. Such properties, having been sequestered by the Government through the PCGG, are in custodia legis and therefore impressed with the character of public property, even though the properties belong to a private individual (Art. 222, RPC).

The failure of Reyes and Santos to give any satisfactory explanation why the vans were missing, is prima facie evidence that they had put the same to their personal use.

Malversation (2006)

1. In 1982, the Philippine National Bank (PNB), then a government banking institution, hired Henry dela Renta, a CPA, as Regional Bank Auditor. In 1992, he resigned and was employed by the Philippine Deposit Insurance Corporation (PDIC), another government-owned and controlled corporation. In 1995, after the PNB management unearthed many irregularities and violations of the bank's rules and regulations, dela Renta was found to have manipulated certain accounts involving trust funds and time deposits of depositors. After investigation, he was charged with malversation of public funds before the Sandiganbayan. He filed a motion to dismiss contending he was no longer an employee of the PNB but of the PDIC. Is dela Renta's contention tenable? (2.5%)

SUGGESTED ANSWER:

The contention of Henry dela Renta is not tenable. Dela Renta may be prosecuted for malversation even if he had ceased to be an employee of the PNB. At the time of the commission of the offense, PNB was a government owned and controlled corporation and therefore, any crime committed by the Regional Bank Auditor, who is a public officer, is subject to the jurisdiction of the Sandiganbayan (See R.A. 7975 as amended by RA. 8249).

2. After his arraignment, the prosecution filed a motion for his suspension pendente lite, to which he filed an opposition claiming that he can no longer be suspended as he is no longer an employee of the PNB but that of the PDIC. Explain whether he may or may not be suspended. (2.5%)

SUGGESTED ANSWER:

Dela Renta may still be suspended pendente lite despite holding a different public office, the PDIC, when he was charged. The term "office" in Sec. 13 of R.A. 3019 applies to any office which the officer might currently be holding and not necessarily the office or position in relation to which he is charged *(Segovia v. Sandiganbayan, G.R. No. 122740, March 30,1998).*

Malversation vs. Estafa (1999)

How is malversation distinguished from estafa?

SUGGESTED ANSWER:

Malversation differs from estafa in that malversation is committed by an accountable public officer involving public funds or property under his custody and accountability; while estafa is committed by non-accountable public officer or private individual involving funds or property for which he is not accountable to the government.

Malversation: Anti-Fencing: Carnapping (2005) Allan, the Municipal Treasurer of the Municipality of Gerona, was in a hurry to return to his office after a day-long official conference. He alighted from the government car which was officially assigned to him, leaving the ignition key and the car unlocked, and rushed to his office. Jules, a bystander, drove off with the car and later sold the same to his brother, Danny for P20,000.00, although the car was worth P800,000.00.

What are the respective crimes, if any, committed by Allan, Danny and Jules? Explain.

SUGGESTED ANSWER:

Allan, the municipal treasurer is liable for malversation committed through negligence or culpa. The government car which was assigned to him is public property under his accountability by reason of his duties. By his act of negligence, he permitted the taking of the car by another person, resulting in malversation, consistent with the language of Art. 217 of the Revised Penal Code.

Danny violated the Anti-Fencing Law. He is in possession of an item which is the subject of thievery.
P.D. No. 1612 (Anti-Fencing Law) under Section 5 provides that mere possession of any good, article, item, object or any thing of value which has been the subject of robbery or thievery shall be prima facie, evidence of fencing.

Jules is guilty of carnapping. He took the motor vehicle belonging to another without the latter's consent. (R.A. No. 6539)

What, if any, are their respective civil liabilities? Explain. (5%)

SUGGESTED ANSWER:

Allan is under obligation to restitute the vehicle or make reparation if not possible.

Jules must pay the amount he gained from the sale of the car which is P20,000.00.

Danny must make reparation corresponding to the value of the car which is P800,000.00.

Malversation; Properties; Custodia Legis (2001)

Accused Juan Santos, a deputy sheriff in a Regional Trial Court, levied on the personal properties of a defendant in a civil case before said court, pursuant to a writ of execution duly issued by the court. Among the properties levied upon and deposited inside the "evidence room" of the Clerk of Court for Multiple RTC Salas were a refrigerator, a stock of cassette tapes, a dining table set of chairs and several lampshades. Upon the defendant's paying off the judgment creditor, he tried to claim his properties but found out that several items were missing, such as the cassette tapes, chairs and lampshades. After due and diligent sleuthing by the police detectives assigned to the case, these missing items were found in the house of accused Santos, who reasoned out that he only borrowed them temporarily. If you were the fiscal /prosecutor, what would be the nature of the information to be filed against the accused? Why? (5%)

SUGGESTED ANSWER:

If I were the fiscal/prosecutor, I would file an information for Malversation against Juan Santos for the cassette tapes, chain and lampshades which he, as deputy sheriff, levied upon and thus under his accountability as a public officer. Said properties being under levy, are in custodia legis and thus impressed with the character of public property, misappropriation of which constitutes the crime of malversation although said properties belonged to a private individual (Art. 222, RPC).

Juan Santos misappropriated such properties when, in breach of trust, he applied them to his own private use and benefit. His allegation that he only borrowed such properties is a lame excuse, devoid of merit as there is no one from whom he borrowed the same. The fact that it was only "after due and diligent sleuthing by the police detectives assigned to the case", that the missing items were found in the house of Santos, negates his pretension.

ALTERNATIVE ANSWER:

An information for Theft may be filed, considering that the sheriff had already deposited the properties levied upon in the "evidence room" of the Clerk of Court and may have already been relieved of his accountability therefor.

If Juan Santos was no longer the public officer who should be accountable for the properties levied upon and found in his house, his taking of such properties would no longer constitute Malversation but Theft, as there was taking with intent to gain, of personal property of another without the consent of the latter.

Malversation; Technical Malversation (1996)

Elizabeth is the municipal treasurer of Masinloc, Zambales. On January 10, 1994, she received, as municipal treasurer, from the Department of Public Works and Highways, the amount of P100,000.00 known as the fund for construction, rehabilitation, betterment, and Improvement (CRBI) for the concreting of Barangay Phanix Road located in Masinloc, Zambales, a project undertaken on proposal of the Barangay Captain. Informed that the fund was already exhausted while the concreting of Barangay Phanix Road remained unfinished, a representative of the Commission on Audit conducted a spot audit of Elizabeth who failed to account for the Pl00,000 CRBI fund. Elizabeth, who was charged with malversation of public funds, was acquitted by the Sandiganbayan of that charge but was nevertheless convicted, in the same criminal case, for illegal use of public funds. On appeal, Elizabeth argued that her conviction was erroneous as she applied the amount of P50,000.00 for a public purpose without violating any law or ordinance appropriating the said amount for any specific purpose. The absence of such law or ordinance was, in fact, established. Is the contention of Elizabeth legally tenable? Explain.

SUGGESTED ANSWER:

Elizabeth's contention that her conviction for illegal use of public funds (technical malversation) was erroneous, is legally tenable because she was charged for malversation of public funds under Art. 217 of the Revised Penal Code but was convicted for Illegal use of public funds which is defined and punished under Art. 220 of said Code. A public officer charged with malversation may not be validly convicted of illegal use of public funds (technical malversation) because the latter crime is not necessarily included nor does it necessarily include the crime of malversation. The Sandiganbayan should have followed the procedure provided in Sec. 11, Rule 119 of the Rules of Court and order the filing of the proper Information. *(Parungao us. Sandiganbayan. 197 SCRA 173.)* From the facts, there is no showing that there is a law or ordinance appropriating the amount to a specific public purpose. As a matter of fact, the problem categorically states that the absence of such law or ordinance was, in fact, established." So, procedurally and substantially , the Sandiganbayan's decision suffers from serious Infirmity.

Public Officers; definition (1999)

Who are public officers? (2%)

SUGGESTED ANSWER:

Public Officers are persons who, by direct provision of the law, popular election or appointment by competent authority, takes part in the performance of public functions in the Government of the Philippines, or performs in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class (Art. 203, RPC)

Public Officers; Infidelity in Custody of Prisoners (1996)

A chief of police of a municipality, believing in good faith that a prisoner serving a ten-day sentence in the municipal jail, would not escape, allowed said prisoner to sleep at the latter's house because the municipal Jail was so congested and there was no bed space available. Accordingly, the prisoner went home to sleep every night

but returned to jail early each morning, until the ten-day sentence had been fully served. Did the Chief of Police commit any crime? Explain.

SUGGESTED ANSWER:

The Chief of Police is guilty of violation of Art. 223, RPC, consenting or conniving to evasion, the elements of which are (a) he is a public officer, (b) he is in charge or custody of a prisoner, detention or prisoner by final judgment, (c) that the prisoner escaped, and (d) there must be connivance.

Relaxation of a prisoner is considered infidelity, thus making the penalty ineffectual; although the convict may not have fled *(US vs. Bandino, 9 Phil. 459)* it is still violative of the provision. It also includes a case when the guard allowed the prisoner, who is serving a six-day sentence in the municipal Jail, to sleep in his house and eat there *(People vs. Revilla).*

Public Officers; Infidelity in Custody of Prisoners (1997) During a town fiesta. A, the chief of police, permitted B, a detention prisoner and his compadre, to leave the municipal jail and entertain visitors in his house from 10:00 a.m. to 8:00 p.m. B returned to the municipal jail at 8:30 p.m. Was there any crime committed by A?

SUGGESTED ANSWER:

Yes, A committed the crime of infidelity in the custody of a prisoner. Since B is a detention prisoner. As Chief of Police, A has custody over B. Even if B returned to the municipal Jail at 8:30 p.m. A, as custodian of the prisoner, has maliciously failed to perform the duties of his office, and when he permits said prisoner to obtain a relaxation of his imprisonment, he consents to the prisoner escaping the punishment of being deprived of his liberty which can be considered real and actual evasion of service under Article 223 of the Revised Penal Code *(People vs. Leon Bandino 29 Phil. 459).*

ALTERNATIVE ANSWER:

No crime was committed by the Chief of Police. It was only an act of leniency or laxity in the performance of his duty and not in excess of his duty *(People vs. Evangelista (CA) 38 O.G. 158).*

Crimes Against Persons

Complex Crime; Homicide w/ Assault-Authority (1995) Pascual operated a rice thresher in Barangay Napnud where he resided. Renato, a resident of the neighboring Barangay Guihaman, also operated a mobile rice thresher which he often brought to Barangay Napnud to thresh the palay of the farmers there. This was bitterly resented by Pascual, One afternoon Pascual, and his two sons confronted Renato and his men who were operating their mobile rice thresher along a feeder road in Napnud. A heated argument ensued. A barangay captain who was fetched by one of Pascual's men tried to appease Pascual and Renato to prevent a violent confrontation. However, Pascual resented the intervention of the barangay captain and hacked him to death. What crime was committed by Pascual? Discuss fully.

SUGGESTED ANSWER:

Pascual committed the complex crime of homicide with assault upon a person in authority (Arts. 148 and 249 in relation to Art, 48, RPC). A barangay chairman, is in law (Art. 152), a person in authority and if he is attacked while in the performance of his official duties or on the occasion thereof the felony of direct assault is committed.

Art. 48, RPC, on the other hand, provides that if a single act produces two or more grave or less grave felonies, a complex crime is committed. Here, the single act of the offender in hacking the victim to death resulted in two felonies, homicide which is grave and direct assault which is less grave.

Complex Crime; Parricide w/ unintentional abortion (1994) Aldrich was dismissed from his Job by his employer. Upon reaching home, his pregnant wife, Carmi, nagged him about money for her medicines. Depressed by his dismissal and angered by the nagging of his wife, Aldrich struck Carmi with his fist. She fell to the ground. As a result, she and her unborn baby died. What crime was committed by Aldrich?

SUGGESTED ANSWER:

Aldrich committed the crime of parricide with unintentional abortion. When Aldrich struck his wife, Carmi, with his fist, he committed the crime of maltreatment under Art, 266, par. 3 of the Revised Penal Code, Since Carmi died because of the felonious act of Aldrich, he is criminally liable of parricide under Art. 246, RPC in relation to Art. 4, par. 1 of the same Code. Since the unborn baby of Carmi died in the process, but Aldrich had no intention to cause the abortion of his wife, Aldrich committed unintentional abortion as defined in Art. 257, RPC. Inasmuch as the single act of Aldrich produced two grave or less grave felonies, he falls under Art, 48, RPC, ie. a complex crime *(People vs. Salufrancia, 159 SCRA 401).*

Criminal Liabilities; Rape; Homicide & Theft (1998 No) King went to the house of Laura who was alone. Laura offered him a drink and after consuming three bottles of beer. King made advances to her and with force and violence, ravished her. Then King killed Laura and took her jewelry.

Doming, King's adopted brother, learned about the incident. He went to Laura's house, hid her body, cleaned everything and washed the bloodstains inside the room.

Later, King gave Jose, his legitimate brother, one piece of jewelry belonging to Laura. Jose knew that the jewelry was taken from Laura but nonetheless he sold it for P2,000. What crime or crimes did King, Doming and Jose commit? Discuss their criminal liabilities. [10%]

SUGGESTED ANSWER:

King committed the composite crime of Rape with homicide as a single indivisible offense, not a complex crime, and Theft. The taking of Laura's jewelry when she is already dead is only theft.

Criminal Liability; Tumultous Affray (1997)

During a town fiesta, a free-for-all fight erupted in the public plaza. As a result of the tumultuous affray, A sustained one fatal and three superficial stab wounds. He died a day after. B, C, D and E were proven to be participants in the "rumble", each using a knife against A, but it could not be ascertained who among them inflicted the mortal injury. Who shall be held criminally liable for the death of A and for what?

SUGGESTED ANSWER:

B, C, D, and E being participants in the tumultuous affray and having been proven to have inflicted serious physical injuries, or at least, employed violence upon A, are criminally liable for the latter's death. And because it cannot be ascertained who among them inflicted the mortal injury on A, there being a free-for-all fight or tumultuous affray. B, C, D, and E are all liable for the crime of death caused in a tumultuous affray under Article 251 of the Revised Penal Code.

Criminal Liability; Tumultuous Affray (2003)

In a free-for-all brawl that ensued after some customers inside a night club became unruly, guns were fired by a group, among them A and B, that finally put the customers back to their senses. Unfortunately, one customer died. Subsequent investigation revealed that A's gunshot had inflicted on the victim a slight wound that did not cause the deceased's death nor materially contribute to it. It was B's gunshot that inflicted a fatal wound on the deceased. A contended that his liability should, if at all, be limited to slight physical injury. Would you agree? Why? 6%

SUGGESTED ANSWER:

No, I beg to disagree with A's contention that his liability should be limited to slight physical injury only. He should be held liable for attempted homicide because he inflicted said injury with the use of a firearm which is a lethal weapon. Intent to kill is inherent in the use of a firearm. *(Araneta, Jr. v. Court of Appeals, 187 SCRA 123 [1990])*

ALTERNATIVE ANSWER:

Yes, I would agree to A's contention that his criminal liability should be for slight physical injury only, because he fired his gun only to pacify the unruly customers of the night club and therefore, without intent to kill. B's gunshot that inflicted a fatal wound on the deceased may not be imputed to A because conspiracy cannot exist when there is a free-for-all brawl or tumultuous affray. A and B are liable only for their respective act

Death under Exceptional Circumstances (2001)

A and B are husband and wife. A is employed as a security guard at Landmark, his shift being from 11:00 p.m. to 7:00 a.m. One night, he felt sick and cold, hence, he decided to go home around midnight after getting permission from his duty officer. Upon reaching the front yard of his home, he noticed that the light in the master bedroom was on and that the bedroom window was open. Approaching the front door, he was surprised to hear sighs and giggles inside the bedroom. He opened the door very carefully and peeped inside where he saw his wife B having sexual intercourse with their neighbor C. A rushed inside and grabbed C but the latter managed to wrest himself free and jumped out of the window, A followed suit and managed to catch C again and after a furious struggle, managed also to strangle him to death. A then rushed back to his bedroom where his wife B was cowering under the bed covers. Still enraged, A hit B with fist blows and rendered her unconscious. The police arrived after being summoned by their neighbors and arrested A who was detained, inquested and charged for the death of C and serious physical Injuries of B. a) Is A liable for C's death? Why? (5%) b) Is A liable for B's injuries? Why? (5%)

SUGGESTED ANSWER:

a) Yes, A is liable for C's death but under the exceptional circumstances in Article 247 of the Revised Penal Code, where only destierro is prescribed. Article 247 governs since A surprised his wife B in the act of having sexual intercourse with C, and the killing of C was "Immediately thereafter" as the discovery, escape, pursuit and killing of C form one continuous act. *(U.S. vs. Vargas, 2 Phil. 194)*

b) Likewise, A is liable for the serious physical injuries he inflicted on his wife B but under the same exceptional circumstances in Article 247 of the Revised Penal Code, for the same reasons.

Death under Exceptional Circumstances (2005)

Pete, a security guard, arrived home late one night after rendering overtime. He was shocked to see Flor, his wife, and Benjie, his best friend, completely naked having sexual intercourse. Pete pulled out his service gun and shot and killed Benjie. Pete was charged with murder for the death of Benjie. Pete contended that he acted in defense of his honor and that, therefore, he should be acquitted of the crime.

The court found that Benjie died under exceptional circumstances and exonerated Pete of the crime, but sentenced him to destierro, conformably with Article 247 of the Revised Penal Code. The court also ordered Pete to pay indemnity to the heirs of the victim in the amount of P50,000.00. (5%)

Is the defense of Pete meritorious? Explain.

SUGGESTED ANSWER:

No. A person who commits acts penalized under Article 247 of the Revised Penal Code for death or serious physical injuries inflicted under exceptional circumstances is still criminally liable. However, this is merely an exempting circumstance when the victim suffers any other kind of physical injury. In the case at bar, Pete will suffer the penalty of destierro for the death of Benjie.

ALTERNATIVE ANSWER:

No. Pete did not act in defense of his honor. For this defense to apply under Art. 11, there must be an unlawful aggression which is defined as an attack or material aggression that poses a danger to his life or personal safely. It must be a real aggression characterized by a physical force or with a weapon to cause injury or damage to one's life. *(People v. Nahayra, G.R. Nos. 96368-69, October 17, 1991; People v. Housing, G.R. No. 64965, July 18, 1991)*

Under Article 247 of the Revised Penal Code, is destierro a penalty? Explain.

SUGGESTED ANSWER:

In the case of *People v. Abarca, G.R. No. 74433, September 14, 1987*, the Court ruled that Article 247 does not define a felony. However, it went on to state that the penalty is merely banishment of the accused, intended for his protection. Punishment, therefore, is not inflicted on the accused.

ALTERNATIVE ANSWER:

Yes. Article 247 of the Revised Penal Code does not define and provide for a specific crime but grants a privilege or benefit to the accused for the killing of another or the infliction of Serious Physical Injuries. Destierro is a punishment whereby a convict is banished to a certain place and is prohibited from entering or coming near that place designated in the sentence, not less than 25 kms. *(People v. Araquel, G.R. No. L-12629, December 9, 1959)*

Did the court correctly order Pete to pay indemnity despite his exoneration under Article 247 of the Revised Penal Code? Explain.

SUGGESTED ANSWER:

Yes, because the privilege defined under this Article exempts the offender from criminal liability but not from civil liability. *(People v. Abarca, G.R, No. L-74483, September 14, 1987; Art. 12, Revised Penal Code)*

Homicide; Fraustrated; Physical Injuries (1994)

At about 11:00 in the evening, Dante forced his way inside the house of Mamerto. Jay, Mamerto's son, saw Dante and accosted him, Dante pulled a knife and stabbed Jay on his abdomen. Mamerto heard the commotion and went out of his room. Dante, who was about to escape, assaulted Mamerto. Jay suffered injuries which, were it not for the timely medical attendance, would have caused his death. Mamerto sustained Injuries that incapacitated him for 25 days. What crime or crimes did Dante commit?

SUGGESTED ANSWER:

Dante committed qualified trespass to dwelling, frustrated homicide for the stabbing of Jay, and less serious physical injuries for the assault on Mamerto.

The crime of qualified trespass to dwelling should not be complexed with frustrated homicide ...

Dante committed frustrated homicide for the stabbing of Jay because he had already performed all the acts of execution which would have produced the intended felony of homicide were it not for causes independent of the act of Dante. Dante had the intent to kill judging from the weapon used, the manner of committing the crime and the part of the body stabbed. Dante is guilty of less serious physical injuries for the wounds sustained by Mamerto. There appears to be no intent to kill because Dante merely assaulted Mamerto without using the knife.

Infanticide (2006)

Ana has been a bar girl/GRO at a beer house for more than 2 years. She fell in love with Oniok, the bartender, who impregnated her. But Ana did not inform him about her condition and instead, went home to Cebu to conceal her shame. However, her parents drove her away. So she returned to Manila and stayed with Oniok in his boarding house. Upon learning of her pregnancy, already in an advanced state, Oniok tried to persuade her to undergo an abortion, but she refused. Because of their constant and bitter quarrels, she suffered birth pangs and gave birth prematurely to a live baby girl while Oniok was at his place of work. Upon coming home and learning what happened, he prevailed upon Ana to conceal her dishonor. Hence, they placed the infant in a shoe box and threw it into a nearby creek. However, an inquisitive neighbor saw them and with the help of others, retrieved the infant who was already dead from drowning. The incident was reported to the police who arrested Ana and Oniok. The 2 were charged with parricide under Article 246 of the Revised Penal Code. After trial, they were convicted of the crime charged. Was the conviction correct?

SUGGESTED ANSWER:

The conviction of Ana and Oniok is not correct. They are liable for infanticide because they killed a child less than three days of age (Art. 255, Revised Penal Code).

Murder & Sec. 25, R.A. No. 9165 (2005)

Candido stabbed an innocent bystander who accidentally bumped him. The innocent bystander died as a result of the stabbing. Candido was arrested and was tested to be positive for the use of "shabu" at the time he committed the stabbing. What should be the proper charge against Candido? Explain. (3%)

SUGGESTED ANSWER:

The killing was not attended by any of the qualifying circumstances enumerated under Article 248 of the Revised Penal Code. The killing, however, constitutes murder because the commission of a crime under the influence of prohibited drugs is a qualifying, aggravating circumstance. (Sec. 25, R.A. No. 9165)

Murder (1999)

The accused, not intending to kill the victim, treacherously shot the victim while the victim was turning his back to him. He aimed at and hit the victim only on the leg. The victim, however, died because of loss of blood. Can the accused be liable for homicide or murder, considering that treachery was clearly involved

but there was no attempt to kill? Explain your answer. (3%)

SUGGESTED ANSWER:

The accused is liable for the death of the victim even though he merely aimed and fired at the latter's leg, "not intending to kill the victim", considering that the gunshot was felonious and was the proximate cause of death. An offender is liable for all the direct, natural, and logical consequences of his felonious act although different from what he intended. However, since specific intent to kill is absent, the crime for said death is only homicide and not murder *(People vs. Pugay and Samson, 167 SCRA 439)*

ALTERNATIVE ANSWER:

The accused is liable for the death of the victim in as much as his act of shooting the victim at the leg is felonious and is the proximate cause of death. A person performing a felonious act is criminally liable for all the direct, natural, and logical consequences of such act although different from what he intended. And since such death was attended by treachery, the same will constitute murder but the accused should be given the benefit of the mitigating circumstance that he did not intend to commit so grave a wrong as that which was committed (Art. 13(3), RPC)

Murder; Definition & Elements (1999)

Define murder. What are the elements of the crime? [3%]

SUGGESTED ANSWER:

(a) Murder is the unlawful killing of a person which otherwise would constitute only homicide, had it not been attended by any of the following circumstances:

1. With treachery or taking advantage of superior strength, or with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
2. In consideration of a price, reward or promise;
3. By means or on the occasion of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

SUGGESTED ANSWER:

(b) The elements of murder are: (1) that a person was unlawfully killed; (2) that such a killing was attended by any of the above-mentioned circumstances; (3) that the killing is not parricide nor infanticide; and (4) that the accused killed the victim.

Murder; Evident Premeditation (1996)

Fidel and Fred harbored a long standing grudge against Jorge who refused to marry their sister Lorna, after the latter got pregnant by Jorge. After weeks of surveillance, they finally cornered Jorge in Ermita, Manila, when the latter was walking home late at night. Fidel and Fred forcibly brought Jorge to Zambales where they kept him hog-tied in a small nipa house located in the middle of a rice field. Two days later, they killed Jorge and dumped his body into the river. What crime or crimes did Fidel and Fred commit? Explain.

SUGGESTED ANSWER:

Fidel and Fred committed the crime of Murder under Art 248, RPC, the killing being qualified by evident premeditation. This is due to the long standing grudge entertained by the two accused occasioned by the victim's refusal to marry their sister after impregnating her.

In *People vs. Alfeche. 219 SCRA 85*, the intention of the accused is determinative of the crime committed. Where the intention is to kill the victim and the latter is forcibly taken to another place and later killed, it is murder. There is no indication that the offenders intended to deprive the victim of his liberty. Whereas, if the victim is kidnapped, and taken to another situs and killed as an afterthought, it is kidnapping with homicide under Art. 267, RPC.

Murder; Homicide; Infanticide; Parricide (1999)

A killed: (1) a woman with whom he lived without benefit of clergy, (2) their child who was only two days old, (3) their daughter, and (4) their adopted son. What crime or crimes did A commit? (3%)

SUGGESTED ANSWER:

A committed the following crimes:

1.] HOMICIDE or murder as the case may be, for the killing of his common-law wife who is not legally considered a "spouse"

2.] INFANTICIDE for the killing of the child as said child is less than three (3) days old. (Art. 255, RPC) However, the penalty corresponding to parricide shall be imposed since A is related to the child within the degree defined in the crime of parricide.

3.] PARRICIDE for the killing of their daughter, whether legitimate or illegitimate, as long as she is not less than three (3) days old at the time of the killing.

4.] MURDER for the killing of their adopted son as the relationship between A and the said son must be by blood in order for parricide to arise.

Murder; Reckles Imprudence (2001)

Mang Jose, a septuagenarian, was walking with his ten-year old grandson along Paseo de Roxas and decided to cross at the intersection of Makati Avenue but both were hit by a speeding CRV Honda van and were sent sprawling on the pavement a meter apart. The driver, a Chinese mestizo, stopped his car after hitting the two victims but then reversed his gears and ran over Mang Jose's prostrate body anew and third time by advancing his car forward. The grandson suffered broken legs only and survived but Mang Jose suffered multiple fractures and broken ribs, causing his instant death. The driver was arrested and charged with Murder for the death of Mang

Jose and Serious Physical Injuries through Reckless Imprudence with respect to the grandson. Are the charges correct? Explain. (5%)

SUGGESTED ANSWER:

Yes, the charges are correct. For deliberately running over Mang Jose's prostrate body after having bumped him and his grandson, the driver indeed committed Murder, qualified by treachery. Said driver's deliberate intent to kill Mang Jose was demonstrated by his running over the latter's body twice, by backing up the van and driving it forward, whereas the victim was helpless and not in a position to defend himself or to retaliate.

As to the serious physical injuries sustained by Mang Jose's 10-year old grandson, as a result of having been hit by the speeding vehicle of said driver, the same were the result of reckless imprudence which is punishable as a quasi-offense in Article 365 of the Revised Penal Code. The charge of Reckless Imprudence Resulting to Serious Physical Injuries is correct. The penalty next higher in degree to what ordinarily should be imposed is called for, since the driver did not lend help on the spot, which help he could have given to the victims.

Murder; Treachery (1995)

On his way to buy a lotto ticket, a policeman suddenly found himself surrounded by four men. One of them wrestled the police officer to the ground and disarmed him while the other three companions who were armed with a hunting knife, an ice pick, and a balisong, repeatedly stabbed him. The policeman died as a result of the multiple stab wounds inflicted by his assailants. What crime or crimes were committed? Discuss fully.

SUGGESTED ANSWER:

All the assailants are liable for the crime of murder, qualified by treachery, (which absorbed abuse of superior strength) as the attack was sudden and unexpected and the victim was totally defenseless. Conspiracy is obvious from the concerted acts of the assailants. Direct assault would not complex the crime, as there is no showing that the assailants knew that the victim was a policeman; even if there was knowledge, the fact is that he was not in the performance of his official duties, and therefore there is no direct assault.

Murder; Use of Illegal Firearms (2004)

PH killed OJ, his political rival in the election campaign for Mayor of their town. The Information against PH alleged that he used an unlicensed firearm in the killing of the victim, and this was proved beyond reasonable doubt by the prosecution. The trial court convicted PH of two crimes: murder and illegal possession of firearms. Is the conviction correct? Reason briefly. (5%)

SUGGESTED ANSWER:

No, the conviction of PH for two crimes, murder and illegal possession of firearm is not correct. Under the new law on illegal possession of firearms and explosives, Rep. Act No. 8294, a person may only be criminally liable for illegal possession of firearm if no other crime is committed therewith; if a homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as an aggravating circumstance.

PH therefore may only be convicted of murder and the use of an unlicensed firearm in its commission may only be appreciated as a special aggravating circumstance, provided that such use is alleged specifically in the information for Murder.

Parricide (1999)

Who may be guilty of the crime of parricide? (3%)

SUGGESTED ANSWER:

Any person who kills his father, mother, or child, whether legitimate or illegitimate, or his ascendants or descendants, or spouse, shall be guilty of parricide. (Art. 246, RPC)

Parricide (1999)

In 1975, Pedro, then a resident of Manila, abandoned his wife and their son, Ricky, who was then only three years old. Twenty years later, an affray took place in a bar in Olongapo City between Pedro and his companions, on one hand, and Ricky and his friends, upon the other, without the father and son knowing each other. Ricky stabbed and killed Pedro in the fight, only to find out, a week later, when his mother arrived from Manila to visit him in jail, that the man whom he killed was his own father. 1) What crime did Ricky commit? Explain. 2) Suppose Ricky knew before the killing that Pedro is his father, but he nevertheless killed him out of bitterness for having abandoned him and his mother, what crime did Ricky commit? Explain.

SUGGESTED ANSWER:

1) Ricky committed parricide because the person killed was his own father, and the law punishing the crime (Art. 246, RPC) does not require that the crime be "knowingly" committed. Should Ricky be prosecuted and found guilty of parricide, the penalty to be imposed is Art. 49 of the Revised Penal Code for Homicide (the crime he intended to commit) but in its maximum period.

ALTERNATIVE ANSWER:

Ricky should be held criminally liable only for homicide not parricide because the relationship which qualified the killing to parricide is virtually absent for a period of twenty years already, such that Ricky could not possibly be aware that his adversary was his father. In other words, the moral basis for imposing the higher penalty for parricide is absent.

SUGGESTED ANSWER:

2) The crime committed should be parricide if Ricky knew before the killing that Pedro is his father, because the moral basis for punishing the crime already exists. His having acted out of bitterness for having been abandoned by his father may be considered mitigating.

Parricide; Multiple Parricide; Homicide (1997)

A, a young housewife, and B, her paramour, conspired to kill C. her husband, to whom she was lawfully married, A

and B bought pancit and mixed it with poison. A gave the food with poison to C, but before C could eat it. D, her illegitimate father, and E, her legitimate son, arrived.
C. D and E shared the food in the presence of A who merely watched them eating. C, D and E died because of having partaken of the poisoned food. What crime or crimes did A and B commit?

SUGGESTED ANSWER:

A committed the crime of multiple parricide for the killing of C, her lawful husband, D, her illegitimate father, and E, her legitimate son. All these killings constitute parricide under Article 246 of the Revised Penal Code because of her relationship with the victims.

B committed the crime of murder as a co-conspirator of A in the killing of C because the killing was carried out by means of poison (Art. 248. par. 3, Revised Penal Code). But for feloniously causing the death of D and E, B committed two counts of homicide. The plan was only to kill C.

Rape (1995)

Gavino boxed his wife Alma for refusing to sleep with him. He then violently threw her on the floor and forced her to have sexual intercourse with him. As a result Alma suffered serious physical injuries.
(a) Can Gavino be charged with rape?
Explain.
(b) Can Gavino be charged with serious physical injuries?
Explain
(c) Will your answers to (a) and (b) be the same if before the incident Gavino and Alma were legally separated?
Explain.

SUGGESTED ANSWER:

(a) No. A husband cannot be charged with the rape of his wife because of the matrimonial consent which she gave when she assumed the marriage relation, and the law will not permit her to retract in order to charge her husband with the offense *(Sate vs. Haines, 11 La. Ann. 731 So. 372; 441 RA 837).*

(b) Yes, he may be guilty of serious physical injuries. This offense is specially mentioned in Art. 263 [4], paragraph 2 which imposes a higher penalty for the crime of physical injuries in cases where the offense shall have been committed against any of the persons enumerated in Art 246 (the crime of parricide).

(c) No, my answer will not be the same. If Gavino, and Alma were legally separated at the time of the incident, then Gavino could be held liable for rape.

A legal separation is a separation of the spouses from bed and board *(U.S. vs. Johnson, 27 Phil. 477, cited in II Reyes, RFC, p. 853. 1981 edition),*

In the crime of rape, any crime resulting from the infliction of physical injuries suffered by the victim on the occasion of the rape, is absorbed by the crime of rape. The injuries suffered by the victim may, however, be considered in determining the proper penalty which shall be imposed on the offender. Serious physical injuries cannot be absorbed in rape; it can be so if the injury is slight.

Rape; Absence of Force & Intimidation (1995)

Three policemen conducting routine surveillance of a cogonal area in Antipole chanced upon Ruben, a 15-year old tricycle driver, on top of Rowena who was known to be a child prostitute. Both were naked from the waist down and appeared to be enjoying the sexual activity. Ruben was arrested by the policemen despite his protestations that Rowena enticed him to have sex with her in advance celebration of her twelfth birthday. The town physician found no semen nor any bleeding on Rowena's hymen but for a healed scar. Her hymenal opening easily admitted two fingers showing that no external force had been employed on her. Is Ruben liable for any offense? Discuss fully. Answer;

SUGGESTED ANSWER:

Ruben is liable for rape, even if force or intimidation is not present. The gravamen of the offense is the carnal knowledge of a woman below twelve years of age *(People vs. Dela Cruz, 56 SCRA 84)* since the law doesn't consider the consent voluntary and presumes that a girl below twelve years old does not and cannot have a will of her own. In *People us. Perez, CA 37 OG 1762*, it was held that sexual intercourse with a prostitute below twelve years old is rape.

Similarly, the absence of spermatozoa does not disprove the consummation as the important consideration is not the emission but the penetration of the female body by the male organ *(People vs. Jose 37 SCRA 450; People vs. Carandang, 52 SCRA 259).*

Rape; Anti-Rape Law of 1997 (2002)

What other acts are considered rape under the Anti-Rape Law of 1997, amending the Revised Penal Code? (3%)

SUGGESTED ANSWER:

The other acts considered rape under the Anti-Rape Law of 1997 are: 1.] having carnal knowledge of a woman by a man by
means of fraudulent machination or grave abuse of authority, 2.] having carnal knowledge of a demented woman by a
man even if none of the circumstances required in rape be present; and 3.] committing an act of sexual assault by inserting a
person's penis into the victim's mouth or anal orifice, or by inserting any instrument or object, into the genital or anal orifice of another person.

Rape; Anti-Rape Law of 1997 (2002)

The Anti-Rape Law of 1997 reclassified rape from a crime against honor, a private offense, to that of a crime against persons. Will the subsequent marriage of the offender and the offended party extinguish the criminal action or the penalty imposed? Explain. (2%)

SUGGESTED ANSWER:

Yes. By express provision of Article 266-C of the Revised Penal Code, as amended, the subsequent valid marriage between the offender and offended party shall extinguish the criminal action or the penalty imposed, although rape has been reclassified from a crime against chastity, to that of a crime against persons.

Rape; Consented Abduction (2002)

A with lewd designs, took a 13-year old girl to a nipa hut in his farm and there had sexual intercourse with her. The girl did not offer any resistance because she was infatuated with the man, who was good-looking and belonged to a rich and prominent family in the town. What crime, if any, was committed by A? Why? (2%)

SUGGESTED ANSWER:

A committed the crime of consented abduction under Article 343 of the Revised Penal Code, as amended. The said Article punishes the abduction of a virgin over 12 and under 18 years of age, carried out with her consent and with lewd designs. Although the problem did not indicate the victim to be virgin, virginity should not be understood in its material sense, as to exclude a virtuous woman of good reputation, since the essence of the crime is not the injury to the woman but the outrage and alarm to her family *(Valdepenas vs. People,16 SCRA 871 [1966]).*

ALTERNATIVE ANSWER:

A committed "Child Abuse" under Rep. Act No. 7610. As defined in said law, "child abuse" includes sexual abuse or any act which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being, whose age is below eighteen (18) years.

Rape; Effect; Affidavit of Desistance (1993)

1 Ariel intimidated Rachel, a mental retardate, with a bolo into having sexual Intercourse with him. Rachel's mother immediately filed a complaint, supported by her sworn statement, before the City Prosecutor's Office. After the necessary preliminary investigation, an information was signed by the prosecutor but did not contain the signature of Rachel nor of her mother. Citing Art. 344 of the RPC (prosecution of the crimes of rape, etc.), Ariel moves for the dismissal of the case. Resolve with reasons.

2 After the prosecution had rested its case, Ariel presented a sworn affidavit of desistance executed by Rachel and her mother stating that they are no longer interested in prosecuting the case and that they have pardoned Ariel. What effect would this affidavit of desistance have on the criminal and civil aspects of the case? Explain fully.

SUGGESTED ANSWER:

1) The case should not be dismissed. ... 2) The affidavit of desistance will only amount to the condonation of civil liability but not criminal liability hence the case should still proceed.

Rape; Male Victim (2002)

A, a male, takes B, another male, to a motel and there, through threat and intimidation, succeeds in inserting his penis into the anus of B. What, if any, is A's criminal liability? Why?

SUGGESTED ANSWER:

A shall be criminally liable for rape by committing an act of sexual assault against B, by inserting his penis into the anus of the latter.

Even a man may be a victim of rape by sexual assault under par. 2 of Article 266-A of the Revised Penal Code, as amended, "when the offender's penis is inserted into his mouth or anal orifice."

Rape; Multiple Rapes; Forcible Abduction (2000)

Flordeluna boarded a taxi on her way home to Quezon City which was driven by Roger, Flordeluna noticed that Roger was always placing his car freshener in front of the car aircon ventilation but did not bother asking Roger why. Suddenly, Flordeluna felt dizzy and became unconscious. Instead of bringing her to Quezon City, Roger brought Flordeluna to his house in Cavite where she was detained for two (2) weeks. She was raped for the entire duration of her detention. May Roger be charged and convicted of the crime of rape with serious illegal detention? Explain. (5%)

SUGGESTED ANSWER:

No, Roger may not be charged and convicted of the crime of rape with serious illegal detention. Roger may be charged and convicted of multiple rapes. Each rape is a distinct offense and should be punished separately. Evidently, his principal intention was to abuse Flordeluna; the detention was only incidental to the rape.

ALTERNATIVE ANSWER:

No, Roger may not be charged and convicted of the crime of rape with serious illegal detention, since the detention was incurred in raping the victim during the days she was held. At most, Roger may be prosecuted for forcible abduction for taking Flordeluna to Cavite against the latter's will and with lewd designs. The forcible abduction should be complexed with one of the multiple rapes committed, and the other rapes should be prosecuted and punished separately, in as many rapes were charged and proved.

Rape; Proper Party (1993)

Ariel intimidated Rachel, a mental retardate, with a bolo into having sexual Intercourse with him. Rachel's mother immediately filed a complaint, supported by her sworn statement, before the City Prosecutor's Office. After the necessary preliminary investigation, an information was signed by the prosecutor but did not contain the signature of Rachel nor of her mother. Citing Art. 344 of the RPC (prosecution of the crimes of rape, etc.), Ariel moves for the dismissal of the case. Resolve with reasons.

SUGGESTED ANSWER:

The case should not be dismissed. This is allowed by law *(People us. Ilarde, 125 SCRA 11).* It is enough that a

complaint was filed by the offended party or the parents in the Fiscal's Office.

Rape; Statutory Rape; Mental Retardate Victim (1996)

The complainant, an eighteen-year old mental retardate with an intellectual capacity between the ages of nine and twelve years, when asked during the trial how she felt when she was raped by the accused, replied "Masarap, it gave me much pleasure."

With the claim of the accused that the complainant consented for a fee to the sexual intercourse, and with the foregoing answer of the complainant, would you convict the accused of rape if you were the judge trying the case? Explain.

SUGGESTED ANSWER:

Yes, I would convict the accused of rape. Since the victim is a mental retardate with an intellectual capacity of a child less than 12 years old, she is legally incapable of giving a valid consent to the sexual Intercourse. The sexual intercourse is tantamount to a statutory rape because the level of intelligence is that of a child less than twelve years of age. Where the victim of rape is a mental retardate, violence or Intimidation is not essential to constitute rape. *(People us. Trimor, G,R. 106541-42, 31 Mar 95)* As a matter of fact, RA No. 7659, the Heinous Crimes Law, amended Art. 335, RPC, by adding the phrase "or is demented."

Crimes against Personal Liberty and Security

Arbitrary Detention; Elements; Grounds (2006)

1. What are the 3 ways of committing arbitrary detention? Explain each. (2.5.%)

SUGGESTED ANSWER:

The 3 ways of arbitrary detention are:

a) Arbitrary detention by detaining a person without legal ground committed by any public officer or employee who, without legal grounds, detains a person (Art. 124, Revised Penal Code).

b) Delay in the delivery of detained persons to the proper judicial authorities which is committed by a public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offense punishable by light penalties, or their equivalent; eighteen hours (18), for crimes or offenses punishable by correctional facilities, or their equivalent; and thirty-six (36) hours for crimes or offenses punishable by afflictive or capital penalties, or their equivalent (Art. 125, Revised Penal Code).

c) Delaying release is committed by any public officer or employee who delays the release for the period of time specified therein the performance of any judicial or executive order for the release of the prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person (Art. 126, Revised Penal Code).

2. What are the legal grounds for detention? (2.5%)

SUGGESTED ANSWER:

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital shall be considered legal grounds for the detention of any person (Art. 124[2], Revised Penal Code).

3. When is an arrest by a peace officer or by a private person considered lawful? Explain. (5%)

1. When the arrest by a peace officer is made pursuant to a valid warrant.
2. A peace officer or a private person may, without a warrant, arrest a person:

i. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense,

ii. When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it, and

iii. When the person to be arrested is a prisoner who has escaped from penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (Sec. 5, Rule 113,1985 Rules on Criminal Procedure).

Grave Coercion (1998)

Isagani lost his gold necklace bearing his initials. He saw Roy wearing the said necklace. Isagani asked Roy to return to him the necklace as it belongs to him, but Roy refused. Isagani then drew his gun and told Roy, "If you will not give back the necklace to me, I will kill you!" Out of fear for his life and against his will, Roy gave the necklace to Isagani, What offense did Isagani commit? (5%)

SUGGESTED ANSWER:

Isagani committed the crime of grave coercion (Art. 286, RPC) for compelling Roy, by means of serious threats or intimidation, to do something against the latter's will, whether it be right or wrong. Serious threats or intimidation approximating violence constitute grave coercion, not grave threats. Such is the nature of the threat in this case because it was committed with a gun, is a deadly weapon.

The crime is not robbery because intent to gain, which is an essential element of robbery, is absent since the necklace belongs to Isagani.

Grave Coercion vs. Maltreatment of Prisoner (1999)

Forcibly brought to the police headquarters, a person was tortured and maltreated by agents of the law in order to compel him to confess a crime imputed to him. The agents failed, however, to draw from him a confession which was their intention to obtain through the employment of such means. What crime was committed by the agents of the law? Explain your answer. (3%)

SUGGESTED ANSWER:

Evidently, the person tortured and maltreated by the agents of the law is a suspect and may have been detained by them. If so and he had already been booked and put in jail, the crime is maltreatment of prisoner and the fact that the suspect was subjected to torture to extort a confession would bring about a higher penalty. In addition to the offender's liability for the physical injuries inflicted.

But if the suspect was forcibly brought to the police headquarters to make him admit the crime and tortured/ maltreated to make him confess to such crime, but later released because the agents failed to draw such confession, the crime is grave coercion because of the violence employed to compel such confession without the offended party being confined in jail. *(US vs. Cusi, 10 Phil 143)*

It is noted that the offended party was merely "brought" to the police headquarters and is thus not a detention prisoner. Had he been validly arrested, the crime committed would be maltreatment of prisoners.

Illegal Detention vs. Grave Coercion (1999)

Distinguish coercion from illegal detention. (3%)

SUGGESTED ANSWER:

Coercion may be distinguished from illegal detention as follows: in coercion, the basis of criminal liability is the employment of violence or serious intimidation approximating violence, without authority of law, to prevent a person from doing something not prohibited by law or to compel him to do something against his will, whether it be right or wrong; while in Illegal detention, the basis of liability is the actual restraint or locking up of a person, thereby depriving him of his liberty without authority of law. If there was no intent to lock up or detain the offended party unlawfully, the crime of illegal detention is not committed.

Kidnapping (2002)

A and B were legally separated. Their child C, a minor, was placed in the custody of A the mother, subject to monthly visitations by B, his father. On one occasion, when B had C in his company, B decided not to return C to his mother. Instead, B took C with him to the United States where he intended for them to reside permanently. What crime, if any, did B commit? Why? (5%)

SUGGESTED ANSWER:

B committed the crime of kidnapping and failure to return a minor under Article 271, in relation to Article 270, of the Revised Penal Code, as amended. Article 271 expressly penalizes any parent who shall take from and deliberately fail to restore his or her minor child to the parent or guardian to whom custody of the minor has been placed. Since the custody of C, the minor, has been given to the mother and B has only the right of monthly visitation, the latter's act of taking C to the United Slates, to reside there permanently, constitutes a violation of said provisions of law.

Kidnapping (2006)

Jaime, Andy and Jimmy, laborers in the noodles factory of Luke Tan, agreed to kill him due to his arrogance and miserliness. One afternoon, they seized him and loaded him in a taxi driven by Mario. They told Mario they will only teach Luke a lesson in Christian humility. Mario drove them to a fishpond in Navotas where Luke was entrusted to Emil and Louie, the fishpond caretakers, asking them to hide Luke in their shack because he was running from the NBI. The trio then left in Mario's car for Manila where they called up Luke's family and threatened them to kill Luke unless they give a ransom within 24 hours. Unknown to them, because of a leak, the kidnapping was announced over the radio and TV. Emil and Louie heard the broadcast and panicked, especially when the announcer stated that there is a shoot-to-kill order for the kidnappers. Emil and Louie took Luke to the seashore of Dagat-dagatan where they smashed his head with a shovel and buried him in the sand. However, they were seen by a barangay kagawad who arrested them and brought them to the police station. Upon interrogation, they confessed and pointed to Jaime, Andy, Jimmy and Mario as those responsible for the kidnapping. Later, the 4 were arrested and charged. What crime or crimes did the 6 suspects commit? (5%)

ALTERNATIVE ANSWER:

a) Jaime, Andy and Jimmy committed kidnapping with homicide. The original intention was to demand ransom from the family with the threat of killing. As a consequence of the kidnapping, however, Luke was killed. Thus, the victim was deprived of his freedom and the subsequent killing, though committed by another person, was a consequence of the detention. Hence, this properly qualified the crime as the special complex crime of kidnapping for ransom with homicide

(People v. Mamarion, G.R. No. 137554, October 1, 2003; Art. 267, Revised Penal Code).

b) Emil and Louie who smashed the head of the victim and buried the latter in the sand committed murder qualified by treachery or abuse of superior strength. They are not liable for kidnapping because they did not conspire, nor are they aware of the intention to detain Luke whom they were informed was hiding from the NBI (Art. 248, Revised Penal Code).

c) Mario has no liability since he was not aware of the criminal intent and design of Jaime, Andy and Jimmy. His act of bringing Luke to Navotas for "a

lesson in Christian humility" does not constitute a crime.

Alternative Answer:

a) Jaime, Andy and Jimmy committed kidnapping with ransom. After kidnapping Luke, they demanded ransom with the threat of killing him. However, the killing of Luke is separate from the kidnapping having been committed by other persons, who had nothing to do with the kidnapping, and who will be liable for a different crime (Penultimate par. of Art. 267, Revised Penal Code).

b) Emil and Louie who smashed the head of the victim and buried the latter in the sand committed murder qualified by treachery or abuse of superior strength. They are not liable for kidnapping because they did not conspire, nor are they aware of the intention to detain Luke whom they were informed was hiding from the NBI (Art. 248, Revised Penal Code).

c) Mario has no liability since he was not aware of the criminal intent and design of Jaime, Andy and Jimmy. His act of bringing Luke to Navotas for "a lesson in Christian humility" does not constitute a crime.

Kidnapping w/ Homicide (2005)

Paz Masipag worked as a housemaid and yaya of the one-week old son of the spouses Martin and Pops Kuripot. When Paz learned that her 70 year-old mother was seriously ill, she asked Martin for a cash advance of P1,000.00 but Martin refused. One morning, Paz gagged the mouth of Martin's son with stockings; placed the child in a box; sealed it with masking tape and placed the box in the attic. Later in the afternoon, she demanded P5,000.00 as ransom for the release of his son. Martin did not pay the ransom. Subsequently, Paz disappeared.

After a couple of days, Martin discovered the box in the attic with his child already dead. According to the autopsy report, the child died of asphyxiation barely three minutes after the box was sealed. What crime or crimes did Paz commit? Explain. (5%)

SUGGESTED ANSWER:

Paz committed the composite crime of kidnapping with homicide under Art. 267, RFC as amended by R.A. No. 7659. Under the law, any person who shall detain another or in any manner deprive him of liberty and the victim dies as a consequence is liable for kidnapping with homicide and shall be penalized with the maximum penalty.

In this case, notwithstanding the fact that the one-week old child was merely kept in the attic of his house, gagged with stockings and placed in a box sealed with tape, the deprivation of liberty and the intention to kill becomes apparent. Though it may appear that the means employed by Paz was attended by treachery (killing of an infant), nevertheless, a separate charge of murder will not be proper in view of the amendment. Here, the term "homicide" is used in its generic sense and covers all forms of killing whether in the nature of murder or otherwise. It is of no moment that the evidence shows the death of the child took place three minutes after the box was sealed and the demand for the ransom took place in the afternoon. The intention is controlling here, that is, ransom was demanded.

ALTERNATIVE ANSWER:

Murder qualified by treachery because the victim was only one week old. The offense was attended with the aggravating circumstance of lack of respect due to the age of the victim, cruelty and abuse of confidence. In *People v. Lora (G.R. No, L-49430, March 30, 1982),* the Court found that a child subjected to similar treatment as the infant in this case would have died instantly, negating any intent to kidnap or detain when ransom was sought. Demand for ransom did not convert the offense into kidnapping with murder because the demand was merely a scheme by the offender (Paz) to conceal the body of her victim.

Kidnapping; Effects; Voluntary Release (2004)

DAN, a private individual, kidnapped CHU, a minor. On the second day, DAN released CHU even before any criminal information was filed against him. At the trial of his case, DAN raised the defense that he did not incur any criminal liability since he released the child before the lapse of the 3-day period and before criminal proceedings for kidnapping were instituted. Will DAN's defense prosper? Reason briefly. (5%)

SUGGESTED ANSWER:

No. DAN's defense will not prosper. Voluntary release by the offender of the offended party in kidnapping is not absolutory. Besides, such release is irrelevant and immaterial in this case because the victim being a minor, the crime committed is kidnapping and serious illegal detention under Art. 267, Revised Penal Code, to which such circumstance does not apply. The circumstance may be appreciated only in the crime of Slight Illegal Detention in Art. 268 *(Asistio v. San Diego, 10 SCRA 673 [1964])*

Kidnapping; Illegal Detention; Minority (2006)

Dang was a beauty queen in a university. Job, a rich classmate, was so enamored with her that he persistently wooed and pursued her. Dang, being in love with another man, rejected him. This angered Job, Sometime in September 2003, while Dang and her sister Lyn were on their way home, Job and his minor friend Nonoy grabbed them and pushed them inside a white van. They brought them to an abandoned warehouse where they forced them to dance naked. Thereafter, they brought them to a hill in a nearby barangay where they took turns raping them. After satisfying their lust, Job ordered Nonoy to push Dang down a ravine, resulting in her death. Lyn ran away but Job and Nonoy chased her and pushed her inside the van. Then the duo drove away. Lyn was never seen again.

1. What crime or crimes were committed by Job and Nonoy? (2.5%)

SUGGESTED ANSWER:

Job and Nonoy committed 1) kidnapping and serious illegal detention with homicide and rape for the subsequent death of Dang, and 2) kidnapping with rape against her sister, Lyn. The victims, who were kidnapped and detained, were subsequently raped and killed (as regards Dang) in the course of their detention. The composite crime is committed regardless of whether the subsequent crimes were purposely sought or merely an afterthought *(People v. Larranaga, G.R. Nos. 138874-5, Februarys, 2004).*

ALTERNATIVE ANSWER:

Job and Nonoy committed 2 counts of the complex crime of forcible abduction with rape (Art. 342, Revised Penal Code) and the separate offense of murder against Dang. The crime committed is abduction because there was lewd design when they took the victims away and subsequently raped them. The killing thereafter, constitutes the separate offense of murder qualified by treachery.

2. What penalties should be imposed on them? (2.5%)

SUGGESTED ANSWER:

Since the death penalty has already been prohibited, reclusion perpetua is the appropriate penalty (RA. 9346). In the case of the minor Nonoy, his penalty shall be one degree lower (Art. 68, Revised Penal Code).

3. Will Nonoy's minority exculpate him? (2.5%)

SUGGESTED ANSWER:

Under RA. 9344, the Juvenile Justice and Reform Act, which retroacts to the date that the crime was committed, Nonoy will be exculpated if he was 15 years old or below. However, if he was above 15 years old but below 18 years of age, he will be liable if he acted with discernment. As the problem shows that Nonoy acted with discernment, he will be entitled to a suspension of sentence.*(NOTABENE: R.A. 9344 is outside the coverage of the examination)*

4. Is the non-recovery of Lyn's body material to the criminal liability of Job and Nonoy? (2.5%)

SUGGESTED ANSWER:

The non-recovery of Lyn's body is not material to the criminal liability of Job and Nonoy, because the corpus delicti of the crime which is kidnapping with rape of Lyn has been duly proven.

ALTERNATIVE ANSWER:

The non-recovery of Lyn's body is not material to the criminal liability of Job and Nonoy, because the corpus delicti of the crime which is forcible abduction with rape of Lyn has been duly proven.

Kidnapping; Proposal to Kidnap (1996)

Edgardo induced his friend Vicente, in consideration of money, to kidnap a girl he is courting so that he may succeed to raping her and eventually making her accede to marry him. Vicente asked for more money which Edgardo failed to put up. Angered because Edgardo did not put up the money he required, he reported Edgardo to the police. May Edgardo be charged with attempted kidnapping? Explain.

SUGGESTED ANSWER:

No, Edgardo may not be charged with attempted kidnapping inasmuch as no overt act to kidnap or restrain the liberty of the girl had been commenced. At most, what Edgardo has done in the premises was a proposal to Vicente to kidnap the girl, which is only a preparatory act and not an overt act. The attempt to commit a felony commences with the commission of overt act, not preparatory act. Proposal to commit kidnapping is not a crime.

Kidnapping; Serious Illegal Detention (1997)

A and B conspiring with each other, kidnapped C and detained him. The duo then called up C's wife informing her that they had her husband and would release him only if she paid a ransom in the amount of P10,000,000 and that, if she were to fail, they would kill him. The next day, C, who had just recovered from an illness had a relapse. Fearing he might die if not treated at once by a doctor, A and B released C during the early morning of the third day of detention.

Charged with kidnapping and serious illegal detention provided in Article 267, RPC, A and B filed a petition for bail. They contended that since they had voluntarily released C within three days from commencement of the detention, without having been paid any amount of the ransom demanded and before the institution of criminal proceedings against them, the crime committed was only slight illegal detention prescribed in Article 268, RPC.

After hearing, the trial court found the evidence of guilt to be strong and therefore denied the petition for bail. On appeal, the only issue was: Was the crime committed kidnapping and serious detention or slight Illegal detention? Decide.

SUGGESTED ANSWER:

The crime committed by A and B is kidnapping and serious illegal detention because they made a demand for ransom and threatened to kill C if the latter's wife did not pay the same. Without the demand for ransom, the crime could have been slight illegal detention only.

The contention of A and B that they had voluntary released C within three days from the commencement of the detention is immaterial as they are charged with a crime where the penalty prescribed is death *(Asistio vs. San Diego. 10SCRA673).*

They were properly denied bail because the trial court found that the evidence of guilt in the information for kidnapping and serious Illegal detention is strong.

Trespass to Dwelling; Private Persons (2006)

Under what situations may a private person enter any dwelling, residence, or other establishments without being liable for trespass to dwelling? (2.5%)

SUGGESTED ANSWER:

Trespass to dwelling is not applicable to any person who shall enter another's dwelling for the purpose of: a) Preventing some serious harm to himself, its occupants, or a third person; and b) Rendering service to humanity or justice;

Any person who shall enter cafes, taverns, inns, and other public houses, while the same are open will likewise not be liable (Art. 280, Revised Penal Code).

Tresspass to Dwelling; Rule of Absorption (1994)

At about 11:00 in the evening, Dante forced his way inside the house of Mamerto. Jay. Mamerto's son, saw Dante and accosted him, Dante pulled a knife and stabbed Jay on his abdomen. Mamerto heard the commotion and went out of his room. Dante, who was about to escape, assaulted Mamerto. Jay suffered Injuries which, were it not for the timely medical attendance, would have caused his death. Mamerto sustained Injuries that incapacitated him for 25 days. What crime or crimes did Dante commit?

SUGGESTED ANSWER:

Dante committed qualified trespass to dwelling, frustrated homicide for the stabbing of Jay, and less serious physical injuries for the assault on Mamerto.

The crime of qualified trespass to dwelling should not be complexed with frustrated homicide because when the trespass is committed as a means to commit a more serious offense, trespass to dwelling is absorbed by the greater crime, and the former constitutes an aggravating circumstance of dwelling *(People vs. Abedoza, 53 Phil.788).*

Dante committed frustrated homicide for the stabbing of Jay.... Dante is guilty of less serious physical injuries for the wounds sustained by Mamerto...

Unjust Vexation vs Acts of Lasciviousness (1994)

When is embracing, kissing and touching a girl's breast considered only unjust vexation instead of acts of lasciviousness?

SUGGESTED ANSWER:

The acts of embracing, kissing of a woman arising either out of passion or other motive and the touching of her breast as a mere incident of the embrace without lewd design constitutes merely unjust vexation *(People vs, Ignacio. CA GRNo. 5119-R, September 30, 1950).* However, where the kissing, embracing and the touching of the breast of a woman are done with lewd design, the same constitute acts of lasciviousness *(People vs. Percival Gilo, 10 SCRA 753).*

Crimes Against Property

Arson; Destructive Arson (1994)

Tata owns a three-storey building located at No. 3 Herran Street. Paco, Manila. She wanted to construct a new building but had no money to finance the construction. So, she insured the building for P3,000,000.00. She then urged Yoboy and Yongsi, for monetary consideration, to bum her building so she could collect the insurance proceeds. Yoboy and Yongsi burned the said building resulting to its total loss. What crime did Tata, Yoboy and Yongsi commit?

SUGGESTED ANSWER:

Tata, Yoboy and Yongsi committed the crime of destructive arson because they collectively caused the destruction of property by means of fire under the circumstances which exposed to danger the life or property of others *(Art, 320, par. 5, RPC. as amended by RA No. 7659).*

Arson; Destructive Arson (2000)

One early evening, there was a fight between Eddie Gutierrez and Mario Cortez. Later that evening, at about 11 o'clock, Eddie passed by the house of Mario carrying a plastic bag containing gasoline, threw the bag at the house of Mario who was inside the house watching television, and then lit it. The front wall of the house started blazing and some neighbors yelled and shouted. Forthwith, Mario poured water on the burning portion of the house. Neighbors also rushed in to help put the fire under control before any great damage could be inflicted and before the flames have extensively spread. Only a portion of the house was burned. Discuss Eddie's liability, (3%)

SUGGESTED ANSWER:

Eddie is liable for destructive arson in the consummated stage. It is destructive arson because fire was resorted to in destroying the house of Mario which is an inhabited house or dwelling. The arson is consummated because the house was in fact already burned although not totally. In arson, it is not required that the premises be totally burned for the crime to be consummated. It is enough that the premises suffer destruction by burning.

Arson; New Arson Law (2004)

CD is the stepfather of FEL. One day, CD got very mad at FEL for failing in his college courses. In his fury, CD got the leather suitcase of FEL and burned it together with all its contents.

1. What crime was committed by CD?
2. Is CD criminally liable? Explain briefly. (5%)

SUGGESTED ANSWER:

The crime committed by CD is arson under Pres. Decree No. 1613 (the new Arson Law) which punishes any person who burns or sets fire to the property of another (Section 1 of Pres. Decree No. 1613).

CD is criminally liable although he is the stepfather of FEL whose property he burnt, because such relationship is not exempting from criminal liability in the crime of arson but only in crimes of theft, swindling or estafa, and malicious mischief (Article 332, Revised Penal Code). The provision (Art. 323) of the Code to the effect that burning property of small value should be punished as malicious mischief has long been repealed by Pres. Decree 1613; hence, there is no more legal basis to consider burning property of small value as malicious mischief.

BP 22; Memorandum Check (1994)

1 What is a memorandum check?

2 Is the "bouncing" thereof within the purview of BP Blg. 22?

SUGGESTED ANSWER:

1 A "Memorandum Check" is an ordinary check, with the word "Memorandum", "Memo" or "Mem" written across its face, signifying that the maker or drawer engages to pay its holder absolutely thus partaking the nature of a promissory note. It is drawn on a bank and is a bill of exchange within the purview of Section 185 of the Negotiable Instruments Law *(People vs. Judge David Nitafan, G.R. No. 75954, October 22, 1992).*

2 Yes, a memorandum check is covered by Batas Pambansa No. 22 because the law covers any check whether it is an evidence of Indebtedness, or in payment of a pre-existing obligation or as a deposit or guarantee *(People versus Nita-fan).*

BP 22; Memorandum Check (1995)

1 What is a memorandum check ?

2 Is a person who issues a memorandum check without sufficient funds necessarily guilty of violating B.P. Blg. 22? Explain. 3 Jane is a money lender. Edmund is a businessman who has been borrowing money from Jane by rediscounting his personal checks to pay his loans. In March 1989, he borrowed P100,000 from Jane and issued to her a check for the same amount. The check was dishonored by the drawee bank for having been drawn against a closed account. When Edmund was notified of the dishonor of his check he promised to raise the amount within five days. He failed. Consequently, Jane sued Edmund for violation of the Bouncing Checks Law (BP. Blg. 22). The defense of Edmund was that he gave the check to Jane to serve as a memorandum of his indebtedness to her and was not supposed to be encashed. Is the defense of Edmund valid? Discuss fully.

SUGGESTED ANSWER:

1. A memorandum check is an ordinary check with the word "Memorandum", "Memo", or "Mem" written across the face, signifying that the maker or drawer engages to pay its holder absolutely thus partaking the nature of a promissory note. It is drawn on a bank and is a bill of exchange within the purview of Section 185 of the Negotiable Instruments Law.

(People vs. Nitafan, 215 SCRA 79)

2. Yes, a person who issued a memorandum check without sufficient funds is guilty of violating B.P. Blg. 22 as said law covers all checks whether it is an evidence of indebtedness, or in payment of a preexisting obligation, or as deposit or guarantee. *(People vs. Nitafan)*

3. The defense of Edmund is NOT valid. A memorandum check upon presentment is generally accepted by the bank. It does not matter whether the check is in the nature of a memorandum as evidence of indebtedness. What the law punishes is the mere issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating thereto. The mere act of issuing a worthless check is a malum prohibitum. The understanding that the check will not be presented at the bank but will be redeemed by the maker when the loan falls due is a mere private arrangement which may not prevail to exempt it from the penal sanction of B.P. Blg. 22. (People vs. Nitafan)

BP 22; Presumption of Knowledge (2002)

A a businessman, borrowed P500,000.00 from B, a friend. To pay the loan, A issued a postdated check to be presented for payment 30 days after the transaction. Two days before the maturity date of the check, A called up B and told him not to deposit the check on the date stated on the face thereof, as A had not deposited in the drawee bank the amount needed to cover the check. Nevertheless, B deposited the check in question and the same was dishonored of insufficiency of funds. A failed to settle the amount with B in spite of the latter's demands. Is A guilty of violating B.P. Blg. 22, otherwise known as the Bouncing Checks Law? Explain. (5%)

SUGGESTED ANSWER:

Yes, A Is liable for violation of BP. Blg. 22 (Bouncing Checks Law), Although knowledge by the drawer of insufficiency or lack of funds at the time of the issuance of the check is an essential element of the violation, the law presumes prima facie such knowledge, unless within five (5) banking days of notice of dishonor or nonpayment, the drawer pays the holder thereof the amount due thereon or makes arrangements for payment in full by the drawee of such checks.

A mere notice by the drawer A to the payee B before the maturity date of the check will not defeat the presumption of knowledge created by the law; otherwise, the purpose and spirit of B.P. 22 will be rendered useless.

Estafa & Trust Receipt Law (1995)

Julio obtained a letter of credit from a local bank in order to import auto tires from Japan. To secure payment of his letter of credit, Julio executed a trust receipt in favor of the bank. Upon arrival of the tires, Julio sold them but did not deliver the proceeds to the bank. Julio was charged with estafa under P.D. No. 115 which makes the violation of a trust receipt agreement punishable as estafa under Art. 315, par. (1), subpar. (b), of the Revised Penal Code. Julio contended that P.D. No. 115 was unconstitutional because it violated the Bill of Rights provision against imprisonment for nonpayment of debt. Rule on the contention of Julio, Discuss fully.

SUGGESTED ANSWER:

Such contention is invalid. A trust receipt arrangement doesn't involve merely a simple loan transaction but includes likewise a security feature where the creditor bank extends financial assistance to the debtor-importer in return for the collateral or security title as to the goods or merchandise being purchased or imported. The title of the bank to the security is the one sought to be protected and not the loan which is a separate and distinct agreement. What is being penalized under P,D. No. 115 is the misuse or misappropriation of the goods or proceeds realized from the sale of the goods, documents or Instruments which are being held in trust for the entrustee-banks. In other words, the law punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of the other, and hence there is no violation of the right against imprisonment for non-payment of debt. *(People vs. Nitafan, 207 SCRA 725)*

Estafa (1999)

Is there such a crime as estafa through negligence? Explain. (2%)

Aurelia introduced Rosa to Victoria, a dealer in jewelry who does business in Timog, Quezon City. Rosa, a resident of Cebu City, agreed to sell a diamond ring and bracelet to Victoria on a commission basis, on condition that, if these items can not be sold, they may be returned to Victoria forthwith. Unable to sell the ring and bracelet, Rosa delivered both items to Aurelia in Cebu City with the understanding that Aurelia shall, in turn, return the items to Victoria in Timog, Quezon City. Aurelia dutifully returned the bracelet to Victoria but sold the ring, kept the cash proceeds thereof to herself, and issued a check to Victoria which bounced. Victoria sued Rosa for estafa under Article 315, R.P.C., Victoria insisting that delivery to a third person of the thing held in trust is not a defense in estafa. Is Rosa criminally liable for estafa under the circumstances? Explain, [4%)

SUGGESTED ANSWER:

(a) There is no such crime as estafa through negligence. In estafa, the profit or gain must be obtained by the accused personally, through his own acts, and his mere negligence in allowing another to take advantage of or benefit from the entrusted chattel cannot constitute estafa. *(People v. Nepomuceno, CA, 46OG 6135)*

(b) No, Rosa cannot be held criminally liable for estafa. Although she received the jewelry from Victoria under an obligation to return the same or deliver the proceeds thereof, she did not misappropriate it. In fact, she gave them to Aurelia specifically to be returned to Victoria. The misappropriation was done by Aurelia, and absent the showing of any conspiracy between Aurelia and Rosa, the latter cannot be held criminally liable for Amelia's acts. Furthermore, as explained above, Rosa's negligence which may have allowed Aurelia to misappropriate the jewelry does not make her criminally liable for estafa.

Estafa vs. BP 22 (1996)

The accused was convicted under B.P, Blg. 22 for having issued several checks which were dishonored by the drawee bank on their due date because the accused closed her account after the issuance of checks. On appeal, she argued that she could not be convicted under

Blg. 22 by reason of the closing of her account because said law applies solely to checks dishonored by reason of insufficiency of funds and that at the time she issued the checks concerned, she had adequate funds in the bank. While she admits that she may be held liable for estafa under Article 215 of the Revised Penal Code, she cannot however be found guilty of having violated

Blg. 22. Is her contention correct? Explain.

SUGGESTED ANSWER:

No, the contention of the accused is not correct. As long as the checks issued were issued to apply on account or for value, and was dishonored upon presentation for payment to the drawee bank for lack of insufficient funds on their due date, such act falls within the ambit of B.P. Blg. 22. Said law expressly punishes any person who may have insufficient funds in the drawee bank when he issues the check, but fails to keep sufficient funds to cover the full amount of the check when presented to the drawee bank within ninety (90) days from the date appearing thereon.

Estafa vs. BP 22 (2003)

A and B agreed to meet at the latter's house to discuss B's financial problems. On his way, one of A's car tires blew up. Before A left following the meeting, he asked B to lend him (A) money to buy a new spare tire. B had temporarily exhausted his bank deposits, leaving a zero balance. Anticipating, however, a replenishment of his account soon, B issued A a postdated check with which A negotiated for a new tire. When presented, the check bounced for lack of funds. The tire company filed a criminal case against A and B. What would be the criminal liability, if any, of each of the two accused? Explain. 8%

SUGGESTED ANSWER:

A who negotiated the unfunded check of B in buying a new tire for his car may only be prosecuted for estafa if he was aware at the time of such negotiation that the check has no sufficient funds in the drawee bank; otherwise, he is not criminally liable.

B who accommodated A with his check may nevertheless be prosecuted under BP 22 for having issued the check, knowing at the time of issuance that it has no funds in the bank and that A will negotiate it to buy a new tire, i.e., for value. B may not be prosecuted for estafa because the facts indicate that he is not actuated by intent to defraud in issuing the check which A negotiated. Obviously, B issued the postdated check only to help A: criminal intent or dolo is absent.

Estafa vs. Money Market Placement (1996)

On March 31, 1995, Orpheus Financing Corporation received from Maricar the sum of P500,000 as money market placement for sixty days at fifteen (15) per cent interest, and the President of said Corporation issued a check covering the amount including the interest due thereon, postdated May 30, 1995. On the maturity date, however, Orpheus Financing Corporation failed to deliver back Maricar's money placement with the corresponding interest earned, notwithstanding repeated demands upon said Corporation to comply with its commitment.

Did the President of Orpheus Financing Corporation incur any criminal liability for estafa for reason of the nonpayment of the money market placement? Explain.

SUGGESTED ANSWER:

No, the President of the financing corporation does not incur criminal liability for estafa because a money market transaction partakes of the nature of a loan, such that nonpayment thereof would not give rise to estafa through misappropriation or conversion. In money market placement, there is transfer of ownership of the money to be invested and therefore the liability for its return is civil in nature *(Perez vs. Court of Appeals, 127 SCRA 636; Sebreno vs. Court of Appeals etal, G.R. 84096, 26 Jan 95).*

Estafa vs. Theft (2005)

DD was engaged in the warehouse business. Sometime in November 2004, he was in dire need of money. He, thus, sold merchandise deposited in his warehouse to VR for P500,000.00. DD was charged with theft, as principal, while VR as accessory. The court convicted DD of theft but acquitted VR on the ground that he purchased the merchandise in good faith. However, the court ordered VR to return the merchandise to the owner thereof and ordered DD to refund the P500,000.00 to VR.

DD moved for the reconsideration of the decision insisting that he should be acquitted of theft because being the depositary, he had juridical possession of the merchandise. VR also moved for the reconsideration of the decision insisting that since he was acquitted of the crime charged, and that he purchased the merchandise in good faith, he is not obligated to return the merchandise to its owner. Rule on the motions with reasons. (5%)

SUGGESTED ANSWER:

The motion for reconsideration should be granted. By depositing the merchandise in his warehouse, he transferred not merely physical but also juridical possession. The element of taking in the crime of theft is wanting. At the most, he could be held liable for estafa for misappropriation of the merchandise deposited.

On the other hand, the motion of VR must also be denied. His acquittal is of no moment because the thing, subject matter of the offense, shall be restored to the owner even though it is found in the possession of a third person who acquired it by lawful means. (Art. 105, RFC)

Estafa; Elements (2005)

DD purchased a television set for P50,000.00 with the use of a counterfeit credit card. The owner of the establishment had no inkling that the credit card used by DD was counterfeit. What crime or crimes did DD commit? Explain. (5%)

SUGGESTED ANSWER:

DD committed the crime of estafa under Art. 315, par. 2(a) of the Revised Penal Code by falsely pretending to posses credit. The elements of estafa under this penal provision are; (1) the accused defrauded another by means of deceit; and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.

The accused also violated R.A. No. 8484, which punishes the use or possession of fake or counterfeit credit card.

Estafa; Falsification of Commercial Document (2000)

Mr. Carlos Gabisi, a customs guard, and Mr, Rico Yto, a private Individual, went to the office of Mr. Diether Ocuarto, a customs broker, and represented themselves as agents of Moonglow Commercial Trading, an Importer of children's clothes and toys. Mr. Gabisi and Mr. Yto engaged Mr. Ocuarto to prepare and file with the Bureau of Customs the necessary Import Entry and Internal Revenue Declaration covering Moonglow's shipment. Mr. Gabisi and Mr. Yto submitted to Mr. Ocuarto a packing list, a commercial invoice, a bill of lading and a Sworn Import Duty Declaration which declared the shipment as children's toys, the taxes and duties of which were computed at P60,000.00. Mr. Ocuarto filed the aforementioned documents with the Manila International Container Port. However, before the shipment was released, a spot check was conducted by Customs Senior Agent James Bandido, who discovered that the contents of the van (shipment) were not children's toys as declared in the shipping documents but 1,000 units of video cassette recorders with taxes and duties computed at P600,000.00. A hold order and warrant of seizure and detention were then issued by the District Collector of Customs. Further investigation showed that Moonglow is non-existent. Consequently, Mr, Gabisi and Mr. Yto were charged with and convicted for violation of Section 3(e) of R.A. 3019 which makes it unlawful among others, for public officers to cause any undue Injury to any party, including the Government. In the discharge of official functions through manifest partiality, evident bad faith or gross inexcusable negligence. In their motion for reconsideration, the accused alleged that the decision was erroneous because the crime was not consummated but was only at an attempted stage, and that in fact the Government did not suffer any undue injury. Assuming that the attempted or frustrated stage of the violation charged is not punishable, may the accused be nevertheless convicted for an offense punished by the Revised Penal Code under the facts of the case? Explain. (3%)

SUGGESTED ANSWER:
Yes, both are liable for attempted estafa thru falsification of commercial documents, a complex crime. They tried to defraud the Government with the use of false commercial and public documents. Damage is not necessary.

Estafa; Falsification of Commercial Documents (1997) The accused opened a saving account with Bank A with an initial deposit of P2,000.00. A few days later, he deposited in the savings account a Bank B check for P 10,000.00 drawn and endorsed purportedly by C. Ten days later, he withdrew P 10,000.00 from his savings account. C complained to Bank B when the check was deducted from his account. Two days thereafter, the accused deposited another Bank B check of P 10,000.00 signed and endorsed allegedly by C. A week later, the accused went to Bank A to withdraw P10,000.00. While withdrawing the amount, he was arrested.

Convicted under two informations of estafa and attempted estafa both through falsification of commercial documents, he set up the defenses that, except for the showing that the signature of C had been forged, no further evidence was presented to establish (a) that he was the forger of the signature of C nor (b), that as to the second charge C suffered any damage. Rule on the defense.

SUGGESTED ANSWER:
The defense is not tenable; (a) the possessor of a falsified document is presumed to be the author of the falsification *(People vs. Sendaydtego, 81 SCRA 120; Koh Tiek vs. People, et al, Dec. 21, 1990)*; (b) In estafa, a mere disturbance of property rights, even if temporary, would be sufficient to, cause damage. Moreover, in a crime of falsification of a commercial document, damage or intent to cause damage is not necessary because the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.

Estafa; Defense of Ownership (2002) A sold a washing machine to B on credit, with the understanding that B could return the appliance within two weeks if, after testing the same, B decided not to buy it. Two weeks lapsed without B returning the appliance. A found out that B had sold the washing machine to a third party- Is B liable for estafa? Why? (5%) SUGGESTED ANSWER: No, B is not liable for estafa because he is not just an entrustee of the washing machine which he sold; he is the owner thereof by virtue of the sale of the washing machine to him. The sale being on credit, B as buyer is only liable for the unpaid price of the washing machine; his obligation is only a civil obligation. There is no felonious misappropriation that could constitute estafa.

Estafa; Swindling (1998)
Divina, is the owner of a 500-square meter residential lot in Makati City covered by TCT No. 1998. As her son needed money for his trip abroad, Divina mortgaged her lot to her neighbor Dino for P1,000,000. Later Divina sold the same lot to Angel for P2,000,000. In the Deed of Sale, she expressly stated that the property is free from any lien or encumbrance. What crime, if any, did Divina commit? [5%]

SUGGESTED ANSWER:
Divina committed estafa or swindling under Art. 316, par. 2 of the Revised Penal Code because, knowing that the real property being sold is encumbered, she still made a misrepresentation in the Deed of Sale that the same is free from any lien or encumbrance. There is thus a deceit or fraud causing damage to the buyer of the lot.

Robbery (1996)
Five robbers robbed, one after the other five houses occupied by different families located inside a compound enclosed by a six-feet high hollow block fence. How many robberies did the five commit? Explain.

SUGGESTED ANSWER:
The offenders committed only one robbery in the eyes of the law because when they entered the compound, they were impelled only by a single indivisible criminal resolution to commit a robbery as they were not aware that there were five families inside said compound, considering that the same was enclosed by a six-feet high hollow-block fence. The series of robbery committed in the same compound at about the same time constitutes one continued crime, motivated by one criminal impulse.

Robbery under RPC (2000)
A, B, C, D and B were in a beerhouse along MacArthur Highway having a drinking spree. At about 1 o'clock in the morning, they decided to leave and so asked for the bill. They pooled their money together but they were still short of P2,000.00. E then orchestrated a plan whereby A, B, C and D would go out, flag a taxicab and rob the taxi driver of all his money while E would wait for them in the beerhouse. A. B, C and D agreed. All armed with balisongs, A, B, C and D hailed the first taxicab they encountered. After robbing X, the driver, of his earnings, which amounted to P1,000.00 only, they needed P1 ,000.00 more to meet their bill. So, they decided to hail another taxicab and they again robbed driver T of his hard-earned money amounting to P1,000. On their way back to the beerhouse, they were apprehended by a police team upon the complaint of X, the driver of the first cab. They pointed to E as the mastermind. What crime or crimes, if any, did A, B, C, D and B commit? Explain fully. (3%)

SUGGESTED ANSWER:
A. B, C, D and E are liable for two (2) counts of robbery under Article 294 of the Rev. Penal Code; not for highway Robbery under PD 532. The offenders are not brigands but only committed the robbery to raise money to pay their bill because it happened that they were short of money to pay the same.

Robbery under RPC (2001)
A and B are neighbors in Barangay Nuevo I, Silang, Cavite. A is a barangay Kagawad and known to be a

bully, while B is reputed to be gay but noted for his industry and economic savvy which allowed him to amass wealth in leaps and bounds, including registered and unregistered lands in several barangays. Resenting B's riches and relying on his political influence, A decided to harass and intimidate B into sharing with him some of his lands, considering that the latter was single and living alone. One night, A broke into B's house, forced him to bring out some titles and after picking out a title covering 200 square meters in their barangay, compelled B to type out a Deed of Sale conveying the said lot to him for P1.00 and other valuable considerations. All the while, A carried a paltik caliber .45 in full view of B, who signed the deed out of fear. When A later on tried to register the deed, B summoned enough courage and had A arrested and charged in court after preliminary investigation.

What charge or charges should be filed against A? Explain. (5%)

SUGGESTED ANSWER:

The charge for Robbery under Article 298 of the Revised Penal Code should be filed against A. Said Article provides that any person who, with intent to defraud another, by means of violence or intimidation, shall compel him to sign, execute and deliver any public instrument or document shall be held guilty of robbery.

The paltik caliber .45 firearm carried by A was obviously intended to intimidate B and thus, used in the commission of the robbery. If it could be established that A had no license or permit to possess and carry such firearm, it should be taken only as special aggravating circumstance to the crime of robbery, not subject of a separate prosecution.

ALTERNATIVE ANSWER:

On the premise that the Deed of Sale which A compelled B to sign, had not attained the character of a "public" instrument or document, A should be charged for the crime of Qualified Trespass to Dwelling under Article 280 of the Revised Penal Code for having intruded into B's house, and for the crime of Grave Coercion under Article 286 of same Code, for compelling B to sign such deed of sale against his will.

Robbery vs. Highway Robbery (2000)

Distinguish Highway Robbery under Presidential Decree No. 532 from Robbery committed on a highway. (3%)

SUGGESTED ANSWER:

Highway Robbery under Pres. Decree 532 differs from ordinary Robbery committed on a highway in these respects:

1 In Highway Robbery under PD 532, the robbery is committed indiscriminately against persons who commute in such highways, regardless of the potentiality they offer; while in ordinary Robbery committed on a highway, the robbery is committed only against predetermined victims;

2 It is Highway Robbery under PD 532, when the offender is a brigand or one who roams in public highways and carries out his robbery in public highways as venue, whenever the opportunity to do so arises. It is ordinary Robbery under the Revised Penal Code when the commission thereof in a public highway is only incidental and the offender is not a brigand: and

3. In Highway Robbery under PD 532, there is frequency in the commission of the robbery in public highways and against persons travelling thereat; whereas ordinary Robbery in public highways is only occasional against a predetermined victim, without frequency in public highways.

Robbery w/ force upon things (2000)

A, brother of B, with the intention of having a night out with his friends, took the coconut shell which is being used by B as a bank for coins from inside their locked cabinet using their common key. Forthwith, A broke the coconut shell outside of their home in the presence of his friends. What is the criminal liability of A, if any? Explain. (3%) Is A exempted from criminal liability under Article 332 of the Revised Penal Code for being a brother of B? Explain. (2%)

SUGGESTED ANSWER:

a) A is criminally liable for Robbery with force upon things, because the coconut shell with the coins inside, was taken with intent to gain and broken outside of their home, (Art. 299 (b) (2). RPC).

b) No, A is not exempt from criminal liability under Art. 332 because said Article applies only to theft, swindling or malicious mischief. Here, the crime committed is robbery.

Robbery w/ Homicide - R.A. No. 7659 (2005)

Jose employed Mario as gardener and Henry as cook. They learned that Jose won P500,000.00 in the lotto, and decided to rob him. Mario positioned himself about 30 meters away from Jose's house and acted as lookout. For his part, Henry surreptitiously gained entry into the house and killed Jose who was then having his dinner. Henry found the P500,000.00 and took it. Henry then took a can of gasoline from the garage and burned the house to conceal the acts. Mario and Henry fled, but were arrested around 200 meters away from the house by alert barangay tanods. The tanods recovered the P500,000.00.

Mario and Henry were charged with and convicted of robbery with homicide, with the aggravating circumstances of arson, dwelling, and nighttime.

Mario moved to reconsider the decision maintaining that he was not at the scene of the crime and was not aware that Henry killed the victim; hence, he was guilty only of robbery, as an accomplice. Mario also claimed that he conspired with Henry to commit robbery but not to kill

Jose. Henry, likewise, moved to reconsider the decision, asserting that he is liable only for attempted robbery with homicide with no aggravating circumstance, considering that he and Mario did not benefit from the P500,000.00. He further alleged that arson is a felony and not an aggravating circumstance; dwelling is not aggravating in attempted robbery with homicide; and nighttime is not aggravating because the house of Jose was lighted at the time he was killed. Resolve with reasons the respective motions of Mario and Henry. (7%)

SUGGESTED ANSWER:

Mario is not correct. Mario conspired and acted in concert with Henry to commit robbery. Hence, the act of one is the act of all and the extent of the specific participation of each individual conspirator becomes secondary, each being held liable for the criminal deed(s) executed by another or others. As a conspirator, Mario casts his lot with his fellow conspirators and becomes liable to any third person who may get killed in the course of implementing the criminal design. *(People v. Punzalan, et al.. G.R. No. 78853, November 8, 1991)*

Henry is incorrect, since he acquired possession of the money. The crime of robbery with force and intimidation is consummated when the robber acquires possession of the property, even if for a short time. It is no defense that they had no opportunity to dispose of or benefit from the money taken. *(People v. Salvilia, et al., G.R. No. 88163, April 26, 1990)*

Since the crime in robbery with force and intimidation against persons (robbery with homicide), dwelling is aggravating. Arson, which accompanied the crime of robbery with homicide is absorbed *(Art. 294, RFC as amended by R.A. No. 7659)* and is not aggravating because the RPC does not provide that such crime is an aggravating circumstance. *(People v. Regala, G.R. No. 130508, April 5, 2000)* Nighttime, likewise, is not aggravating. There is no showing that the same was purposely sought by the offenders to facilitate the commission of the crime or impunity.

Robbery w/ Homicide (1996)

Jose, Domingo, Manolo, and Fernando, armed with bolos, at about one o'clock in the morning, robbed a house at a desolate place where Danilo, his wife, and three daughters were living. While the four were in the process of ransacking Danilo's house, Fernando, noticing that one of Danilo's daughters was trying to get away, ran after her and finally caught up with her in a thicket somewhat distant from the house. Fernando, before bringing back the daughter to the house, raped her first. Thereafter, the four carted away the belongings of Danilo and his family. a) What crime did Jose, Domingo, Manolo and Fernando commit? Explain. b) Suppose, after the robbery, the four took turns in raping the three daughters of Danilo inside the latter's house, but before they left, they killed the whole family to prevent identification, what crime did the four commit? Explain.

SUGGESTED ANSWER:

(a) Jose, Domingo, and Manolo committed Robbery, while Fernando committed complex crime of Robbery with Rape. Conspiracy can be inferred from the manner the offenders committed the robbery but the rape was committed by Fernando at a place "distant from the house" where the robbery was committed, not in the presence of the other conspirators. Hence, Fernando alone should answer for the rape, rendering him liable for the special complex crime. *(People vs. Canturia et. al, G.R. 108490, 22 June 1995}*

b) The crime would be Robbery with Homicide because the killings were by reason (to prevent identification) and on the occasion of the robbery. The multiple rapes committed and the fact that several persons were killed [homicide), would be considered as aggravating circumstances. The rapes are synonymous with Ignominy and the additional killing synonymous with cruelty, *(People vs. Solis, 182 SCRA; People vs. Plaga, 202 SCRA 531)*

Robbery w/ Homicide (1998)

A, B, C and D all armed, robbed a bank, and when they were about to get out of the bank, policemen came and ordered them to surrender but they fired on the police officers who fired back and shot it out with them.

1. Suppose a bank employee was killed and the bullet which killed him came from the firearm of the police officers, with what crime shall you charge A, B. C and D? [3%]
2. Suppose it was robber D who was killed by the policemen and the prosecutor charged A, B and C with Robbery and Homicide. They demurred arguing that they (A, B and C) were not the ones who killed robber D, hence, the charge should only be Robbery. How would you resolve their argument? (2%)

SUGGESTED ANSWER:

1. A, B, C and D should be charged with the crime of robbery with homicide because the death of the bank employee was brought about by the acts of said offenders on the occasion of the robbery. They shot it out with the policeman, thereby causing such death by reason or on the occasion of a robbery; hence, the composite crime of robbery with homicide.
2. The argument is valid, considering that a separate charge for Homicide was filed. It would be different if the charge filed was for the composite crime of robbery with homicide which is a single, indivisible offense.

ALTERNATIVE ANSWER:

2. The argument raised by A, B and C is not correct because their liability is not only for Robbery but for the special complex crime of Robbery with homicide. But the facts stated impresses that separate crimes of Robbery "and" Homicide were charged, which is not correct. What was committed was a single indivisible offense of Robbery with homicide, not two crimes.

Robbery w/ Homicide (2003)

A learned two days ago that B had received dollar bills amounting to $10,000 from his daughter working in the United States. With the intention of robbing B of those dollars, A entered B's house at midnight, armed with a knife which he used to gain entry, and began quietly searching the drawers, shelves, and other likely receptacles of the cash. While doing that, B awoke, rushed out from the bedroom, and grappled with A for the possession of the knife which A was then holding. After stabbing B to death, A turned over B's pillow and found the latter's wallet underneath the pillow, which was bulging with the dollar bills he was looking for. A took the bills and left the house. What crime or crimes were committed? 8%

SUGGESTED ANSWER:

The crime committed is robbery with homicide, a composite crime. This is so because A's primordial criminal intent is to commit a robbery and in the course of the robbery, the killing of B took place. Both the robbery and the killing were consummated, thus giving rise to the special complex crime of robbery with homicide. The primary criminal intent being to commit a robbery, any killing on the "occasion" of the robbery, though not by reason thereof, is considered a component of the crime of robbery with homicide as a single indivisible offense.

Robbery w/ Homicide; Special Complex Crime (1995) Victor, Ricky, Rod and Ronnie went to the store of Mang Pandoy. Victor and Ricky entered the store while Rod and Ronnie posted themselves at the door. After ordering beer Ricky complained that he was shortchanged although Mang Pandoy vehemently denied it. Suddenly Ricky whipped out a knife as he announced "Hold-up ito!" and stabbed Mang Pandoy to death. Rod boxed the store's salesgirl Lucy to prevent her from helping Mang Pandoy. When Lucy ran out of the store to seek help from people next door she was chased by Ronnie. As soon as Ricky had stabbed Mang Pandoy, Victor scooped up the money from the cash box. Then Victor and Ricky dashed to the street and shouted, "Tumakbo na kayo!" Rod was 14 and Ronnie was 17. The money and other articles looted from the store of Mang Pandoy were later found in the houses of Victor and Ricky. Discuss fully the criminal liability of Victor, Ricky, Rod and Ronnie.

SUGGESTED ANSWER:

All are liable for the special complex crime of robbery with homicide. The acts of Ricky in stabbing Mang Pandoy to death, of Rod in boxing the salesgirl to prevent her from helping Mang Pandoy, of Ronnie in chasing the salesgirl to prevent her in seeking help, of Victor in scooping up money from the cash box, and of Ricky and Victor in dashing to the street and announcing the escape, are all indicative of conspiracy.

The rule is settled that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals of the crime of robbery with homicide, unless the accused tried to prevent the killing *(People vs. Baello, 224 SCRA 218)*. Further, the aggravating circumstance of craft could be assessed against the accused for pretending to be customers of Mang Pandoy.

Robbery w/ Intimidation vs. Theft (2002)

A entered the house of another without employing force or violence upon things. He was seen by a maid who wanted to scream but was prevented from doing so because A threatened her with a gun. A then took money and other valuables and left. Is A guilty of theft or of robbery? Explain. (3%)

SUGGESTED ANSWER:

A is liable for robbery because of the intimidation he employed on the maid before the taking of the money and other valuables. It is the intimidation of person relative to the taking that qualifies the crime as robbery, instead of simply theft. The non-employment of force upon things is of no moment because robbery is committed not only by employing force upon things but also by employing violence against or intimidation of persons.

Robbery w/ Rape (1999)

Two young men, A and B, conspired to rob a residential house of things of value. They succeeded in the commission of their original plan to simply rob. A, however, was sexually aroused when he saw the lady owner of the house and so, raped her.

The lady victim testified that B did not in any way participate in the rape but B watched the happening from a window and did nothing to stop the rape. Is B as criminally liable as A for robbery with rape? Explain. (4%)

SUGGESTED ANSWER:

Yes, B is as criminally liable as A for the composite crime of robbery with rape under Art. 294 (1). Although the conspiracy of A and B was only to rob, B was present when the rape was being committed which gave rise to a composite crime, a single indivisible offense of robbery with rape. B would not have been liable had he endeavored to prevent the commission of the rape. But since he did not when he could have done so, he in effect acquiesced with the rape as a component of the robbery and so he is also liable for robbery with rape.

Robbery w/ Rape; Conspiracy (2004)

Together XA, YB and ZC planned to rob Miss OD. They entered her house by breaking one of the windows in her house. After taking her personal properties and as they were about to leave, XA decided on impulse to rape OD. As XA was molesting her, YB and ZC stood outside the door of her bedroom and did nothing to prevent XA from raping OD. What crime or crimes did XA, YB and ZC commit, and what is the criminal liability of each? Explain briefly. (5%)

SUGGESTED ANSWER:
The crime committed by XA, YB and ZC is the composite crime of Robbery with Rape, a single, indivisible offense under Art. 294(1) of the Revised Penal Code.

Although the conspiracy among the offenders was only to commit robbery and only XA raped CD, the other robbers, YB and ZC, were present and aware of the rape being committed by their co-conspirator. Having done nothing to stop XA from committing the rape, YB and ZC thereby concurred in the commission of the rape by their co-conspirator XA.

The criminal liability of all, XA, YZ and ZC, shall be the same, as principals in the special complex crime of robbery with rape which is a single, indivisible offense where the rape accompanying the robbery is just a component.

Robbery; Homicide; Arson (1995)
Harry, an overseas contract worker, arrived from Saudi Arabia with considerable savings. Knowing him to be "loaded", his friends Jason, Manuel and Dave invited him to poker session at a rented beach cottage. When he was losing almost all his money which to him was his savings of a lifetime, he discovered that he was being cheated by his friends. Angered by the betrayal he decided to take revenge on the three cheats.

Harry ordered several bottles of Tanduay Rhum and gave them to his companions to drink, as they did, until they all fell asleep. When Harry saw his companions already sound asleep he hacked all of them to death. Then he remembered his losses. He rifled through the pockets of his victims and got back all the money he lost. He then ran away but not before burning the cottage to hide his misdeed. The following day police investigators found among the debris the charred bodies of Jason, Manuel, Dave and the caretaker of the resort.

After preliminary investigation, the Provincial Prosecutor charged Harry with the complex crime of arson with quadruple homicide and robbery. Was Harry properly charged? Discuss fully.
SUGGESTED ANSWER:
No, Harry was net properly charged. Harry should have been charged with three (3) separate crimes, namely: murder, theft and arson.

Harry killed Jason, Manuel and Dave with evident premeditation, as there was considerable lapse of time before he decided to commit the crime and the actual commission of the crime. In addition, Harry employed means which weakened the defense of Jason, Manuel and Dave. Harry gave them the liquor to drink until they were drunk and fell asleep. This gave Harry the opportunity to carry out his plan of murder with impunity.

The taking of the money from the victims was a mere afterthought of the killings. Hence, Harry committed the separate crime of theft and not the complex crime of robbery with homicide. Although theft was committed against dead persons, it is still legally possible as the offended party are the estates of the victims.

In burning the cottage to hide his misdeed. Harry became liable for another separate crime, arson. This act of burning was not necessary for the consummation of the two (2) previous offenses he committed. The fact that the caretaker died from the blaze did not qualify Harry's crime into a complex crime of arson with homicide for there is no such crime.

Hence, Harry was improperly charged with the complex crime of arson with quadruple homicide and robbery. Harry should have been charged with three (3) separate crimes, murder, theft and arson.

Robbery; Rape (1997)
After raping the complainant in her house, the accused struck a match to smoke a cigarette before departing from the scene. The brief light from the match allowed him to notice a watch in her wrist. He demanded that she hand over the watch. When she refused, he forcibly grabbed it from her. The accused was charged with and convicted of the special complex crime of robbery with rape. Was the court correct?
SUGGESTED ANSWER:
No. the court erred in convicting the accused of the special complex crime of robbery with rape. The accused should instead be held liable for two (2) separate crimes of robbery and rape, since the primary intent or objective of the accused was only to rape the complainant, and his commission of the robbery was merely an afterthought. The robbery must precede the rape. In order to give rise to the special complex crime for which the court convicted the accused.

Theft (1998)
Mario found a watch in a jeep he was riding, and since it did not belong to him, he approached policeman P and delivered the watch with instruction to return the same to whoever may be found to be the owner.

P failed to return the watch to the owner and, instead, sold it and appropriated for himself the proceeds of the sale.

Charged with theft, P reasoned out that he cannot be found guilty because it was not he who found the watch and, moreover, the watch turned out to be stolen property. Is P's defense valid? [5%]
SUGGESTED ANSWER:
No, P's defense is not valid. In a charge for theft, it is enough that the personal property subject thereof belongs to another and not to the offender (P). It is irrelevant whether the person deprived of the possession of the watch has or has no right to the watch. Theft is

committed by one who, with intent to gain, appropriates property of another without the consent of its owner. And the crime is committed even when the offender receives property of another but acquires only physical possession to hold the same.

Theft (2001)

Francis Garcia, a Jollibee waiter, found a gold bracelet in front of his working place in Makati and, upon inspecting it, saw the name and address of the owner engraved on the inside. Remembering his parents' admonition that he should not take anything which does not belong to him, he delivered the bracelet to PO1 Jesus Reyes of the Makati Quad precinct with the instruction to locate the owner and return it to him. PO1 Reyes, instead, sold the bracelet and misappropriated the proceeds. Subsequent events brought out the fact that the bracelet was dropped by a snatcher who had grabbed it from the owner a block away from where Francis had found it and further investigation traced the last possessor as PO1 Reyes. Charged with theft, PO1 Reyes reasoned out that he had not committed any crime because it was not he who had found the bracelet and, moreover, it turned out to have been stolen. Resolve the case with reasons. (10%)

SUGGESTED ANSWER:

Charged with theft, PO1 Reyes is criminally liable. His contention that he has not committed any crime because he was not the one who found the bracelet and it turned out to be stolen also, is devoid of merit. It is enough that the bracelet belonged to another and the failure to restore the same to its owner is characterized by intent to gain.

The act of PO1 Reyes of selling the bracelet which does not belong to him and which he only held to be delivered to its owner, is furtive misappropriation with intent to gain.

Where a finder of lost or mislaid property entrusts it to another for delivery to the owner, the person to whom such property is entrusted and who accepts the same, assumes the relation of the finder to the owner as if he was the actual finder: if he would misappropriate it, he is guilty of theft *(People vs. Avila, 44 Phil. 720).*

Theft; Qualified Theft (2002)

A fire broke out in a department store, A, taking advantage of the confusion, entered the store and carried away goods which he later sold. What crime, if any, did he commit? Why? (2%)

SUGGESTED ANSWER:

A committed the crime of qualified theft because he took the goods on the occasion of and taking advantage of the fire which broke out in the department store. The occasion of a calamity such as fire, when the theft was committed, qualifies the crime under Article 310 of the Revised Penal Code, as amended.

Theft; Qualified Theft (2002)

A vehicular accident occurred on the national highway in Bulacan. Among the first to arrive at the scene of the accident was A, who found one of the victims already dead and the others unconscious. Before rescuers could come, A, taking advantage of the helpless condition of the victims, took their wallets and jewelry. However, the police, who responded to the report of the accident, caught A. What crime or crimes did A commit? Why? (5%)

SUGGESTED ANSWER:

A committed the crime of qualified theft because he took the wallets and jewelry of the victims with evident intent to gain and on the occasion of a vehicular accident wherein he took advantage of the helpless condition of the victims. But only one crime of qualified theft was committed although there were more than one victim divested of their valuables, because all the taking of the valuables were made on one and the same occasion, thus constituting a continued crime.

Theft; Qualified Theft (2006)

1. Forest Ranger Jay Velasco was patrolling the Balara Watershed and Reservoir when he noticed a big pile of cut logs outside the gate of the watershed. Curious, he scouted around and after a few minutes, he saw Rene and Dante coming out of the gate with some more newly-cut logs. He apprehended and charged them with the proper offense. What is that offense? Explain.

SUGGESTED ANSWER:

The offense is Qualified Theft under Sec. 68 of P.D. 705, amending P.D. No. 330, which penalizes any person who directly or indirectly cuts, gathers, removes, or smuggles timber, or other forest products from any of the public forest. The Balara Watershed is protected by the cited laws.

2. During the preliminary investigation and up to the trial proper, Rene and Dante contended that if they were to be held liable, their liability should be limited only to the newly-cut logs found in their possession but not to those found outside the gate. If you were the judge, what will be your ruling? (2.5%)

SUGGESTED ANSWER:

The contention is untenable, the presence of the newly cut logs outside the gate is circumstantial evidence, which, if unrebutted, establishes that they are the offenders who gathered the same.

Theft; Stages of Execution (1998)

In the jewelry section of a big department store, Julia snatched a couple of bracelets and put these in her purse. At the store's exit, however, she was arrested by the guard after being radioed by the store personnel who caught the act in the store's moving camera. Is the crime consummated, frustrated, or attempted? [5%]

SUGGESTED ANSWER:

The crime is consummated theft because the taking of the bracelets was complete after Julia succeeded in putting them in her purse. Julia acquired complete control of the bracelets after putting them in her purse;

hence, the taking with intent to gain is complete and thus the crime is consummated.

Theft; Stages of Execution (2000)

Sunshine, a beauteous "colegiala" but a shoplifter, went to the Ever Department Store and proceeded to the women's wear section. The saleslady was of the impression that she brought to the fitting room three (3) pieces of swimsuits of different colors. When she came out of the fitting room, she returned only two (2] pieces to the clothes rack. The saleslady became suspicious and alerted the store detective. Sunshine was stopped by the detective before she could leave the store and brought to the office of the store manager. The detective and the manager searched her and found her wearing the third swimsuit under her blouse and pants. Was the theft of the swimsuit consummated, frustrated or attempted? Explain. (5%)

SUGGESTED ANSWER:

The theft was consummated because the taking or asportation was complete. The asportation is complete when the offender acquired exclusive control of the personal property being taken: in this case, when Sunshine wore the swimsuit under her blouse and pants and was on her way out of the store. With evident intent to gain, the taking constitutes theft and being complete, it is consummated. It is not necessary that the offender is in a position to dispose of the property,

ALTERNATIVE ANSWER;

The crime of theft was only frustrated because Sunshine has not yet left the store when the offense was opportunely discovered and the article seized from her. She does not have yet the freedom to dispose of the swimsuit she was taking *(People vs. Dino, CA 45 O.G. 3446)*. Moreover, in case of doubt as to whether it is consummated or frustrated, the doubt must be resolved in favor of the milder criminal responsibility.

Usurpation of Real Rights (1996)

Teresita is the owner of a two-hectare land in Bulacan which she planted to rice and corn. Upon her arrival from a three-month vacation in the United States, she was surprised to discover that her land had been taken over by Manuel and Teofilo who forcibly evicted her tenant-caretaker Juliana, after threatening to kill the latter if she would resist their taking of the land. Thereafter, Manuel and Teofilo plowed, cultivated and appropriated the harvest for themselves to the exclusion of Teresita. 1) What crime or crimes did Manuel and Teofilo commit? Explain. 2) Suppose Manuel and Teofilo killed Juliana when the latter refused to surrender possession of the land, what crime or crimes did the two commit? Explain.

SUGGESTED ANSWER:

1) Manuel and Teofilo committed the crime of usurpation of real rights under Art. 312 of the Revised Penal Code for employing violence against or intimidation of persons. The threats to kill employed by them in forcibly entering the land is the means of committing the crime and therefore absorbed in the felony, unless the intimidation resulted in a more serious felony.

2} The crime would still be usurpation of real rights under Art. 312, RPC, even if the said offenders killed the caretaker because the killing is the Violence against persons" which is the means for committing the crime and as such, determinative only. However, this gives way to the proviso that the penalty provided for therein is "in addition to the penalty incurred in the acts of violence (murder or homicide] executed by them. The crime is similar to a robbery where a killing is committed by reason thereof, giving rise only to one indivisible offense
(People vs. Judge Alfeche, plus the fine mentioned therein.

Crimes Against Chastity

Acts of Lasciviousness vs. Unjust Vexation (1994)

When is embracing, kissing and touching a girl's breast considered only unjust vexation instead of acts of lasciviousness?

SUGGESTED ANSWER:

The acts of embracing, kissing of a woman arising either out of passion or other motive and the touching of her breast as a mere incident of the embrace without lewd design constitutes merely unjust vexation *(People us, Ignacio. CA GRNo. 5119-R, September 30, 1950)*. However, where the kissing, embracing and the touching of the breast of a woman are done with lewd design, the same constitute acts of lasciviousness *(People vs. Percival Gilo, 10 SCRA 753)*.

Adultery (2002)

A, a married woman, had sexual intercourse with a man who was not her husband. The man did not know she was married. What crime, if any, did each of them commit? Why? (2%)

SUGGESTED ANSWER:

A, the married woman, committed the crime of adultery under Article 333 of the Revised Penal Code, as amended, for having sexual intercourse with a man not her husband while her marriage is still subsisting. But the man who had carnal knowledge of her, not knowing her to be married, shall not be liable for adultery.

Concubinage (1994)

Abe, married to Liza, contracted another marriage with Connie in Singapore. Thereafter, Abe and Connie returned to the Philippines and lived as husband and wife in the hometown of Abe in Calamba, Laguna. 1) Can Abe be prosecuted for bigamy? 2) If not, can he be prosecuted for any other crime?

SUGGESTED ANSWER:

1) No, Abe may not be prosecuted for bigamy ...

2) Yes, Abe, together with Connie, may be prosecuted for concubinage under Art. 334 of the Revised Penal Code for having cohabited as husband and wife. But concubinage being a private crime requires the sworn complaint of Liza, the offended spouse in accordance

with Rule 110 of the Revised Rules on Criminal Procedure.

Concubinage (2002)

A is married. He has a paramour with whom he has sexual relations on a more or less regular basis. They meet at least once a week in hotels, motels and other places where they can be alone. Is A guilty of any crime? Why? (3%)

SUGGESTED ANSWER:

A is guilty of the crime of concubinage by having sexual intercourse under scandalous circumstances, with a woman who is not his wife.

Having sexual relations on a more or less regular basis in hotels, motels and other places may be considered a scandalous circumstance that offends public conscience, giving rise to criticism and general protest such acts being imprudent and wanton and setting a bad example *(People vs. Santos, 86 SCRA 705 [1978]).*

ALTERNATIVE ANSWER:

A is not guilty of any crime because a married man does not incur the crime of concubinage by merely having a paramour, unless under scandalous circumstances, or he keeps her in the conjugal dwelling as a mistress, or cohabits with her in any other place. His weekly meetings with his paramour does not per se constitute scandalous circumstance.

Unjust Vexation vs. Act of Lasciviousness (2006)

Eduardo Quintos, a widower for the past 10 years, felt that his retirement at the age of 70 gave him the opportunity to engage in his favorite pastime — voyeurism. If not using his high-powered binoculars to peep at his neighbor's homes and domestic activities, his second choice was to follow sweet young girls. One day, he trailed a teenage girl up to the LRT station at EDSA-Buendia. While ascending the stairs, he stayed one step behind her and in a moment of bravado, placed his hand on her left hip and gently massaged it. She screamed and shouted for help. Eduardo was arrested and charged with acts of lasciviousness. Is the designation of the crime correct? (5%)

ALTERNATIVE ANSWER:

The designation of the crime as acts of lasciviousness is not correct. There is no lewd design exhibited by Eduardo when he placed his hand on the left hip of the victim and gently massaging it. The act does not clearly show an exclusively sexual motivation. The crime he committed is only unjust vexation for causing annoyance, irritation or disturbance to the victim (Art. 287, Revised Penal Code), not acts of lasciviousness (Art. 336, Revised Penal Code).

ALTERNATIVE ANSWER:

The crime should be Other Acts of Child Abuse under Section 10 of RA. 7610, par. b of Section 3 that refers to child abuse committed by any act, deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. In relation thereto, Section 10 provides criminal liability for other acts of child abuse, cruelty or exploitation, or for other condi

tions prejudicial to the child's development. The reaction of the victim, screaming for help upon the occurrence of the touching indicates that she perceived her dignity was being debased or violated.

Crimes Against the Civil Status of Persons

Bigamy (1994)

Issa and Bobby, who were first cousins, were married in 1975. In 1993, Bobby was told that his marriage to Issa was incestous under the law then in force and therefore void ab initio. He married Caring.

Charged with bigamy, Bobby raised the defense that his first marriage is void ab initio and therefore, there is no previous marriage to speak of. Will you sustain Bobby's defense?

SUGGESTED ANSWER:

No. I will not sustain Bobby's defense, Bobby remarried in 1993, or after the Family Code took effect on August 3, 1988, and therefore his capacity to marry in 1993 shall be governed by said Code. In Art. 40 of the Family Code, it is mandated that the absolute nullity of a previous marriage maybe invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. **In short, there is a need of a judicial declaration of such nullity before Bobby may validly remarry** *(Dorothy Terre vs. Jordan Terre, 211 SCRA 6).*

Bigamy (1996)

Joselito married Ramona in July, 1995, only to learn later on that Ramona was previously married to David, from whom Ramona had been separated for more than ten years. Believing that his marriage to Ramona was an absolute nullity, Joselito contracted a subsequent marriage with Anabelle. Can Joselito be prosecuted for bigamy? Explain.

SUGGESTED ANSWER:

Yes, Joselito can be prosecuted for bigamy for his subsequent marriage with Anabelle even though his marriage with Ramona was an absolute nullity.

Despite the nullity of the first marriage, Joselito should have filed a case of dissolution of such marriage under Art. 40, Family Code, before contracting a second marriage with Anabelle.

Bigamy (2004)

CBP is legally married to OEM. Without obtaining a marriage license, CBP contracted a second marriage to RST. Is CBP liable for bigamy? Reason briefly. (5%)

SUGGESTED ANSWER:

Whether CBP could be held liable for bigamy or not, depends on whether the second marriage is invalid or valid even without a marriage license. Although as a general rule, marriages solemnized without license are null and void ob initio, there are marriages exempted from license requirement under Chapter 2, Title 1 of the

Family Code, such as in Article 27 which is a marriage in articulo mortis. If the second marriage was valid even without a marriage license, then CBP would be liable for bigamy.

Otherwise, CBP is not liable for bigamy but for Illegal Marriage in Art. 350 for the Revised Penal Code, specifically designated as "Marriage contracted against provisions of laws."

Bigamy; Prescriptive Period (1995)

Joe and Marcy were married in Batanes in 1955. After two years, Joe left Marcy and settled in Mindanao where he later met and married Linda on 12 June 1960. The second marriage was registered in the civil registry of Davao City three days after its celebration. On 10 October 1975 Marcy who remained in Batanes discovered the marriage of Joe to Linda. On 1 March 1976 Marcy filed a complaint for bigamy against Joe.

The crime of bigamy prescribed in fifteen years computed from the day the crime is discovered by the offended party, the authorities or their agents. Joe raised the defense of prescription of the crime, more than fifteen years having elapsed from the celebration of the bigamous marriage up to the filing of Marcy's complaint. He contended that the registration of his second marriage in the civil registry of Davao City was constructive notice to the whole world of the celebration thereof thus binding upon Marcy. Has the crime of bigamy charged against Joe already prescribed? Discuss fully,

SUGGESTED ANSWER:

No. The prescriptive period for the crime of bigamy is computed from the time the crime was discovered by the offended party, the authorities or their agents. The principle of constructive notice which ordinarily applies to land or property disputes should not be applied to the crime of bigamy, as marriage is not property. Thus when Marcy filed a complaint for bigamy on 7 March 1976, it was well within the reglamentary period as it was barely a few months from the time of discovery on 10 October 1975. *(Sermonia vs. CA, 233 SCRA 155)*

Simulation of Birth & Child Trafficking (2002)

A childless couple, A and B, wanted to have a child they could call their own. C, an unwed mother, sold her newborn baby to them. Thereafter, A and B caused their names to be stated in the birth certificate of the child as his parents. This was done in connivance with the doctor who assisted in the delivery of C. What are the criminal liabilities, if any, of the couple A and B, C and the doctor?

SUGGESTED ANSWER:

The couple A and B, and the doctor shall be liable for the crime of simulation of birth, penalized under Article 347 of the Revised Penal Code, as amended. The act of making it appear in the birth certificate of a child that the persons named therein are the parents of the child when they are not really the biological parents of said child constitutes the crime of simulation of birth.

C, the unwed mother is criminally liable for "child trafficking", a violation of Article IV, Sec. 7 of Rep. Act No. 7610. The law punishes inter alia the act of buying and selling of a child.

ALTERNATIVE ANSWER:

The couple A and B, the unwed mother C, and the doctor being all involved in the simulation of birth of the newborn child, violate Rep. Act No. 7610. Their acts constitute child trafficking which are penalized under Article IV of said law.

Crimes Against Honor

Libel (2002)

A. A was nominated Secretary of a Department in the Executive Branch of the government. His nomination was thereafter submitted to the Commission on Appointments for confirmation. While the Commission was considering the nomination, a group of concerned citizens caused to be published in the newspapers a full-page statement objecting to A's appointment They alleged that A was a drug dependent, that he had several mistresses, and that he was corrupt, having accepted bribes or favors from parties transacting business in his previous office, and therefore he was unfit for the position to which he had been nominated. As a result of the publication, the nomination was not confirmed by the Commission on Appointments. The official sued the concerned citizens and the newspapers for libel and damages on account of his non-confirmation. How will you decide the case? (3%)

SUGGESTED ANSWER:

I will acquit the concerned citizens and the newspapers involved, from the crime of libel, because obviously they made the denunciation out of a moral or social duty and thus there is absence of malice.

Since A was a candidate for a very important public position of a Department Secretary, his moral, mental and physical fitness for the public trust in such position becomes a public concern as the interest of the public is at stake. It is pursuant to such concern that the denunciation was made; hence, bereft of malice.

B. If defamatory imputations are made not by publication in the newspapers but by broadcast over the radio, do they constitute libel? Why? (2%)

SUGGESTED ANSWER:

Yes, because libel may be committed by radio broadcast Article 355 of the Revised Penal Code punishes libel committed by means, among others, of radio broadcast, inasmuch as the broadcast made by radio is public and may be defamatory.

Libel (2003)

During a seminar workshop attended by government employees from the Bureau of Customs and the Bureau

of Internal Revenue, A, the speaker, in the course of his lecture, lamented the fact that a great majority of those serving in said agencies were utterly dishonest and corrupt. The following morning, the whole group of employees in the two bureaus who attended the seminar, as complainants, filed a criminal complaint against A for uttering what the group claimed to be defamatory statements of the lecturer. In court, A filed a motion to quash the information, reciting fully the above facts, on the ground that no crime were committed. If you were the judge, how would you resolve the motion? 8%

SUGGESTED ANSWER:

I would grant the motion to quash on the ground that the facts charged do not constitute an offense, since there is no definite person or persons dishonored. The crime of libel or slander, is a crime against honor such that the person or persons dishonored must be identifiable even by innuendoes: otherwise the crime against honor is not committed. Moreover, A was not making a malicious imputation, but merely stating an opinion; he was delivering a lecture with no malice at all during a seminar workshop. Malice being inherently absent in the utterance, the statement is not actionable as defamatory.

Libel (2005)

In an interview aired on television, Cindee uttered defamatory statements against Erika, a successful and reputable businesswoman. What crime or crimes did Cindee commit? Explain. (3%)

SUGGESTED ANSWER:

Cindee committed libel for uttering defamatory remarks tending to cause dishonor or discredit to Erika. Libel can be committed in television programs or broadcasts, though it was not specifically mentioned in the article since it was not yet in existence then, but is included as "any similar means." Defamatory statements aired on television is similar to radio, theatrical exhibition or cinematographic exhibition, which are among the modes for the commission of libel. (Arts. 353 and 355, RPC)

Slander (1988)

For some time, bad blood had existed between the two families of Maria Razon and Judge Gadioma who were neighbors. First, there was a boundary dispute between them which was still pending in court. Maria's mother also filed an administrative complaint against the judge which was however dismissed. The Razons also felt intimidated by the position and alleged influence of their neighbor. Fanning fire to the situation was the practice of the Gadiomas of throwing garbage and animal excrement into the Razon's premises. In an explosion of anger, Maria called Judge Gadioma "land grabber", "shameless", and "hypocrite." What crime was committed by Maria, if any? Explain briefly.

SUGGESTED ANSWER:

Maria committed the crime of slander or slight defamation only because she was under the influence of anger. When Maria called Judge Gadioma a hypocrite and land grabber she imputed to him the commission of crimes.

Slander (1996)

Pia, a bold actress living on top floor of a plush condominium in Makati City sunbathed naked at its penthouse every Sunday morning. She was unaware that the business executives holding office at the adjoining tall buildings reported to office every Sunday morning and, with the use of powerful binoculars, kept on gazing at her while she sunbathed. Eventually, her sunbathing became the talk of the town. 1) What crime, if any, did Pia commit? Explain, 2) What crime, if any, did the business executives commit? Explain.

SUGGESTED ANSWER:

1) Pia did not commit a crime, The felony closest to making Pia criminally liable is Grave Scandal, but then such act is not to be considered as highly scandalous and offensive against decency and good customs. In the first place, it was not done in a public place and within public knowledge or view. As a matter of fact it was discovered by the executives accidentally and they have to use binoculars to have public and full view of Pia sunbathing in the nude.

2) The business executives did not commit any crime. Their acts could not be acts of lasciviousness [as there was no overt lustful act), or slander, as the eventual talk of the town, resulting from her sunbathing, is not directly imputed to the business executives, and besides such topic is not intended to defame or put Pia to ridicule.

Slander by Deed vs. Maltreatment (1994) Distinguish slander by deed from maltreatment.

SUGGESTED ANSWER:

SLANDER BY DEED is a crime committed when a person publicly subjects another to an act intended or calculated to cast dishonor, discredit or contempt upon the latter. Absent the intent to cast dishonor, discredit, contempt, or insult to the offended party, the crime is only MALTREATMENT under Art, 266. par. 3, where, by deed, an offender ill-treats another without causing injury.

Slander vs. Criminal Conversation (2004) Distinguish clearly but briefly between oral defamation and criminal conversation.

SUGGESTED ANSWER:

Oral defamation, known as SLANDER, is a malicious imputation of any act, omission, condition or circumstance against a person, done orally in public, tending to cause dishonor, discredit, contempt, embarassment or ridicule to the latter. This is a crime against honor penalized in Art. 358 of the Revised Penal Code.

CRIMINAL CONVERSATION. The term is used in making a polite reference to sexual intercourse as in

certain crimes, like rape, seduction and adultery. It has no definite concept as a crime.

Miscellaneous

Corpus Delicti (2001)

At a birthday party in Bogo, Cebu, A got intoxicated and started quarrelling with B and C. At the height of their arguments, A left and took a bolo from his house, after which he returned to the party and threatened to stab everybody. B got scared and ran towards the seashore, with A chasing him, B ran up a steep incline along the shore and was cornered on top of a cliff. Out of fear, B jumped from the cliff into the sea, A returned to the scene of their confrontation and seeing that nobody was there, went home to sleep. The next day, B's wife reported to the police station that her husband had not yet come home. A search was conducted by the residents of the barangay but after almost two days, B or his body could not be located and his disappearance continued for the next few days. Based on the testimony of C and other guests, who had seen A and B on top of the cliff, A was arrested and charged with Murder. In his defense, he claimed that since B's body has not been found, there was no evidence of "corpus delicti' and therefore, he should be acquitted. Is the defense of A tenable or not? State the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

The defense of A is not tenable. "Corpus delicti" does not refer to the body of the purported victim which had not been found. Even without the body of the purported victim being found, the offender can be convicted when the facts and circumstances of a crime, the body of the crime or "corpus delicti" is established.

In other words, the non-recovery of the body of the victim is not a bar to the prosecution of A for Murder, but the fact of death and identity of the victim must be established beyond reasonable doubt.

Corpus Delicti; Definition & Elements (2000)

a) Define "corpus delicti". (2%) b) What are the elements of "corpus delicti"? (3%)

SUGGESTED ANSWER:

Corpus Delicti literally means "the body or substance of the crime" or the fact that a crime has been committed, but does not include the identity of the person who committed it. *(People vs. Pascual 44 OG 2789).*

Elements of corpus delicti:

The actual commission by someone of the particular crime charged. It is a compound fact made up of two things:

1 The existence of a certain act or result forming the basis of the criminal charge; and
2 The existence of a criminal agency as the cause of the act or result
3 The identity of the offender is not a necessary element of corpus delicti

Entrapment vs. Instigation (1995) Distinguished entrapment from Instigation.

SUGGESTED ANSWER:

In INSTIGATION, the instigator practically induces the prospective accused into commission of the offense and himself becomes co-principal. In ENTRAPMENT, ways and means are resorted to for the purpose of trapping and capturing the lawbreaker while executing his criminal plan.

Instigation (1995) Suspecting that Juan was a drug pusher, SPO2 Mercado, leader of the Narcom team, gave Juan a Pl00-bill and asked him to buy some marijuana cigarettes. Desirous of pleasing SPO2 Mercado, Juan went inside the shopping mall while the officer waited at the corner of the mall. After fifteen minutes, Juan returned with ten sticks of marijuana cigarettes which he gave to SPO2 Mercado who thereupon placed Juan under arrest and charged him with violation of The Dangerous Drugs Law by selling marijuana cigarettes. Is Juan guilty of any offense punishable under The Dangerous Drugs Act? Discuss fully.

SUGGESTED ANSWER:

Juan cannot be charged of any offense punishable under The Dangerous Drugs Act. Although Juan is a suspected drug pusher, he cannot be charged on the basis of a mere suspicion. By providing the money with which to buy marijuana cigarettes, SPO2 Mercado practically induced and prodded Juan to commit the offense of illegal possession of marijuana. Set against the facts instigation is a valid defense available to Juan.

Entrapment vs. Instigation (2003)

Distinguish fully between entrapment and instigation in Criminal Law, Exemplify each. 4%

SUGGESTED ANSWER:

In ENTRAPMENT -

1 the criminal design originates from and is already in the mind of the lawbreaker even before entrapment;
2 the law enforcers resort to ways and means for the purpose of capturing the lawbreaker in flagrante delicto- and
3 this circumstance is no bar to prosecution and conviction of the lawbreaker.

In INSTIGATION-

1 the idea and design to bring about the commission of the crime originated and developed in the mind of the law enforcers;
2 the law enforcers induce, lure, or incite a person who is not minded to commit a crime and would not otherwise commit it, into committing the crime; and
3 this circumstance absolves the accused from criminal liability *(People v. Dante Marcos, 185 SCRA 154. [1990]).*

Example of Entrapment:
A, an anti-narcotic agent of the Government acted as a poseur buyer of shabu and negotiated with B, a suspected drug pusher who is unaware that A is a police officer. A then issued marked money to B who handed a sachet of shabu to B. Thereupon, A signaled his anti-narcotic team to close-in and arrest B. This is a case of entrapment because the criminal mind is in B already when A transacted with him.

Example of Instigation:
Because the members of an anti-narcotic team are already known to drug pushers. A, the team leader, approached and persuaded B to act as a buyer of shabu and transact with C, the suspected drug pusher. For the purpose, A gave B marked money to be used in buying shabu from C. After C handed the sachet of shabu to B and the latter handed the marked money to C, the team closed-in and placed B and C under arrest. Under the facts, B is not criminally liable for his participation in the transaction because he was acting only under instigation by the law enforcers.

Special Penal Laws

Anti-Carnapping Act; Carnapping w/ Homicide (1998)

Samuel, a tricycle driver, plied his usual route using a Honda motorcycle with a sidecar. One evening, Raul rode on the sidecar, poked a knife at Samuel and instructed him to go near the bridge. Upon reaching the bridge, Raul alighted from the motorcycle and suddenly stabbed Samuel several times until he was dead. Raul fled from the scene taking the motorcycle with him. What crime or crimes did Raul commit? |5%]

SUGGESTED ANSWER:
Raul committed the composite crime of Carnapping with homicide under Sec. 14 of Rep. Act No. 6539, as amended, considering that the killing "in the course or "on the occasion of a carnapping *(People vs. De la Cruz, et al. 183 SCRA 763).* A motorcycle is included in the definition of a "motor vehicle" in said Rep. Act, also known as the 'Anti-Carnapping Act of 1972'. There is no apparent motive for the killing of the tricycle driver but for Raul to be able to take the motorcycle. The fact that the tricycle driver was killed brings about the penalty of reclusion perpetua to death.

ALTERNATIVE ANSWER:
The crime committed by Raul is carnapping, punished by Section 14 of Rep. Act No. 6539. The killing of Samuel is not a separate crime but only an aggravating circumstance.

Anti-Graft & Corrupt Practices - RA 3019 (1997)

A is charged with the crime defined in Section 3(e) of the Anti-Graft and Corrupt Practices Act in an Information that reads:

> That from 01 to 30 January 1995, in the City of Pasig and within the jurisdiction of this Honorable Court, the accused, being then employed in the Office of the District Engineer, Department of Public Works and Highways and in the discharge of his official administrative functions, did then and there willfully and unlawfully work for and facilitate the approval of B's claim for the payment of the price of his land which the government had expropriated, and after the claim was approved, the accused gave B only P1,000.00 of the approved claim of P5,000 and willfully and unlawfully appropriated for himself the balance of P4,000, thus causing undue injury to B and the Government."

A has filed a motion to quash the information, contending that it does not charge an offense. Is he correct?

SUGGESTED ANSWER:
Yes, the contention of A is correct. The information failed to allege that the undue injury to B and the government was caused by the accused's manifest partiality, evident bad faith, or gross Inexcusable negligence, which are necessary elements of the offense charged, ie., violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. The accused is employed in the Office of the District Engineer of the DPWH which has nothing to do with the determination and fixing of the price of the land expropriated, and for which expropriated land the Government is legally obligated to pay. There is no allegation in the information that the land was overpriced or that the payment of the amount was disadvantageous to the Government. It appears that the charge was solely based on the accused having followed up the payment for B's land which the Government has already appropriated, and that the accused eventually withheld for himself from the price of the said land, the amount of P4,000 for his services. No violation of Section 3(e) of the Anti-Graft and Corrupt Act appears. At most, the accused should be merely charged administratively

ALTERNATIVE ANSWERS:
1. Yes, A is correct in filing a motion to quash the information because Section 3(e) of Republic Act 3019 applies only to officers and employees of government corporations charged with the grant of licenses or permits or other concessions, and not to DPWH, which is not a government corporation.
2. A is not correct. In the case of Meforda vs. Sandiganbayan. 151 SCRA 399, which involves a substantially identical information as the Information quoted in the question, the Supreme Court held that the Information was valid. While it is true that the information quoted In the question, failed to allege evident bad faith, gross inexcusable negligence or manifest partiality, said Information Is nevertheless adequate because it averred the three (3) elements for the violation of Section 3(c) of RA. 3012 when it stated (1) that the accused is a public officer at the time of the commission of the crime, being employed in the Office of the District Engineer, DPWH; (2) that the accused caused undue Injury to B and the Government, with the statement that BT the owner of the land, received only P1,000.00 instead of the full value of P5,000.00; and
(3)

that in the discharge of A's official administrative functions, he "did then and there willfully and unlawfully work for and facilitate the approval of his claim xxx and "willfully and unlawfully appropriate for himself the balance of P4,000.00 x x x". An information need not employ or use the very words or language of the statute. It may also use words or language of similar import.

Anti-Hazing law – RA 8049 (2002)

What is hazing as defined by law? (2%)

SUGGESTED ANSWER:

Hazing, as defined by law, is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury.

What does the law require before initiation rites may be performed? (3%)

SUGGESTED ANSWER:

Section 2 of Rep. Act No. 8049 (Anti-Hazing Law) requires that before hazing or initiation rites may be performed, notice to the school authorities or head of organizations shall be given seven (7) days before the conduct of such rites. The written notice shall indicate (a) the period of the initiation activities, not exceeding three (3) days; (b) the names of those to be subjected to such activities, and (c) an undertaking that no physical violence shall be employed by anybody during such initiation rites.

CHILD ABUSE; RA 7610 (2004)

Mrs. MNA was charged of child abuse. It appears from the evidence that she failed to give immediately the required medical attention to her adopted child, BPO, when he was accidentally bumped by her car, resulting in his head injuries and impaired vision that could lead to night blindness. The accused, according to the social worker on the case, used to whip him when he failed to come home on time from school. Also, to punish him for carelessness in washing dishes, she sometimes sent him to bed without supper.

She moved to quash the charge on the ground that there is no evidence she maltreated her adopted child habitually. She added that the accident was caused by her driver's negligence. She did punish her ward for naughtiness or carelessness, but only mildly. Is her motion meritorious? Reason briefly. (5%)

SUGGESTED ANSWER:

No, the motion to quash is not meritorious. It is not necessary that movant's maltreatment of a child be "habitual" to constitute child abuse. The wrongful acts penalized as "Child Abuse" under Rep. Act No. 7610 refers to the maltreatment of the child, "whether habitual or not": this is expressly stated in Sec. 2(b) of the said Law. Mrs. MNA should be liable for child abuse.

Child Abuse; RA 7610 (2006)

Eduardo Quintos, a widower for the past 10 years, felt that his retirement at the age of 70 gave him the opportunity to engage in his favorite pastime — voyeurism. If not using his high-powered binoculars to peep at his neighbor's homes and domestic activities, his second choice was to follow sweet young girls. One day, he trailed a teenage girl up to the LRT station at EDSA-Buendia. While ascending the stairs, he stayed one step behind her and in a moment of bravado, placed his hand on her left hip and gently massaged it. She screamed and shouted for help. Eduardo was arrested and charged with acts of lasciviousness. Is the designation of the crime correct? (5%)

ALTERNATIVE ANSWER:

The crime should be Other Acts of Child Abuse under Section 10 of RA. 7610, par. b of Section 3 that refers to child abuse committed by any act, deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. In relation thereto, Section 10 provides criminal liability for other acts of child abuse, cruelty or exploitation, or for other conditions prejudicial to the child's development. The reaction of the victim, screaming for help upon the occurrence of the touching indicates that she perceived her dignity was being debased or violated.

Dangerous Drug Act: Plea-Bargaining (2005)

Obie Juan is suspected to have in his possession an unspecified amount of methamphetamine hydrochloride or "shabu". An entrapment operation was conducted by police officers, resulting in his arrest following the discovery of 100 grams of the said dangerous drug in his possession. He was subjected to a drug test and was found positive for the use of marijuana, another dangerous drug. He was subsequently charged with two crimes: Violation of Section 11, Article II of RA 9165 for the possession of "shabu" and violation of Section 15, Article II of RA 9165 for the use of marijuana. (5%)

a) Are the charges proper? Explain.

SUGGESTED ANSWER:

No. The use of dangerous drugs is not committed when Obie Juan was also found to have in his possession such quantity of any dangerous drug. *(See s. 11 and 16, RA. No. 9165)*

b) So as not to be sentenced to death, Obie Juan offers to plead guilty to a lesser offense. Can he do so? Why?

SUGGESTED ANSWER:

No. Obie Juan cannot plead guilty to a lower offense as it is prohibited under the law. (Section 23, RA. No. 9165) Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

Dangerous Drugs Act (1998)

Superintendent Al Santiago, Chief of the Narcotics Division, Western Police District, received information that a certain Lee Lay of-No. 8 Tindalo Street, Tondo,

Manila is a member of the 14K Gang selling shabu and marijuana. SPOl Lorenzo and SPO3 Peralta were instructed to conduct surveillance and buy-bust operations against Lay. Their informant contacted Lay and a meeting was arranged at T. Pinpin Restaurant at
2:00 in the afternoon on February 14, 1993. SPO1 Lorenzo and SPO3 Peralta, acting as poseur-buyers, purchased from Lay 10 sticks of marijuana and paid P500. Later, Lay
agreed to sell to them one kilo of dried marijuana fruiting tops which he gave them at his residence.

The policemen arrested Lay and a search was conducted. Found were 356 grams of marijuana seeds, 932 grams of marijuana fruiting tops and 50 sticks of marijuana cigarettes. What offense or offenses did Lay commit? [5%]

SUGGESTED ANSWER:

Lay committed the offenses of illegal selling of dangerous drugs and illegal possession of dangerous drugs which should be made subject of separate informations.

The crime of illegal selling of dangerous drugs is committed as regards the 10 sticks of marijuana and as regards the one (1) kilo of dried marijuana fruiting tops, which should be subject of two (2) separate informations because the acts were committed at different times and in different places.

The crime of Illegal possession of dangerous drugs is committed as regards the marijuana seeds, marijuana fruiting tops and marijuana cigarettes which are not the subject of the sale. Another information shall be filed for this.

Dangerous Drugs Act (2006)

After receiving reliable information that Dante Ong, a notorious drug smuggler, was arriving on PAL Flight NO. PR 181, PNP Chief Inspector Samuel Gamboa formed a group of anti-drug agents. When Ong arrived at the airport, the group arrested him and seized his attache case. Upon inspection inside the Immigration holding area, the attache case yielded 5 plastic bags of heroin weighing 500 grams. Chief Inspector Gamboa took the attache case and boarded him in an unmarked car driven by PO3 Pepito Lorbes. On the way to Camp Crame and upon nearing White Plains corner EDSA, Chief Inspector Gamboa ordered PO3 Lorbes to stop the car. They brought out the drugs from the case in the trunk and got 3 plastic sacks of heroin. They then told Ong to alight from the car. Ong left with the 2 remaining plastic sacks of heroin. Chief Inspector Gamboa advised him to keep silent and go home which the latter did. Unknown to them, an NBI team of agents had been following them and witnessed the transaction. They arrested Chief Inspector Gamboa and PO3 Lorbes. Meanwhile, another NBI team followed Ong and likewise arrested him. All of them were later charged. What are their respective criminal liabilities? (5%)

SUGGESTED ANSWER:

Chief Inspector Gamboa and PO3 Pepito Lorbes who conspired in taking the attache case are liable for the following crimes defined under RA. 9165: a) Sec. 27 for misappropriation or failure to account for the confiscated or seized dangerous drugs. b) Sec. 4 in relation to Sec. 3(ee) for their acts as protector/coddler of Dante Ong who imported drugs

In addition, by allowing Ong to escape prosecution for illegal importation or illegal transportation of dangerous drugs, where the penalty is life imprisonment to death, they are also liable for qualified bribery under Art. 211-A of the Revised Penal Code.

With respect to Dante Ong, he is guilty of illegal importation of dangerous drugs under Sec. 4, R.A. 9165, if PR 181 is an international flight. If PR 181 is a domestic flight, he is liable for violation of Sec. 5, RA. 9165 for illegal transportation of dangerous drugs.

Dangerous Drugs Act (6425); Marked Money (2000)

At about 9 o'clock in the morning, a Narcom Group laid a plan to entrap and apprehend A, a long suspected drug dealer, through a "buy-bust" operation. At the appointed time, the poseur-buyer approached A who was then with B. A marked P100 bill was handed over to A who in turn, gave the poseur-buyer one (1) tea bag of marijuana leaves. The members of the team, who were then positioned behind thick leaves, closed in but evidently were not swift enough since A and B were able to run away. Two days later, A was arrested in connection with another incident. It appears that during the operations, the police officers were not able to seize the marked money but were able to get possession of the marijuana tea bag. A was subsequently prosecuted for violation of Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, During the trial, the marked money was not presented. Can A be held liable? Explain. (2%)

SUGGESTED ANSWER:

Yes. A can be held liable. The absence of the marked money will not create a hiatus in the prosecution's evidence as long as the sale of the dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. There was a perfected contract of sale of the drug *(People vs. Ong Co, 245 SCRA 733; People vs. Zervoulakos, 241 SCRA 625).*

Dangerous Drugs Act (6425); Plea Bargaining (1998)

Edgardo was charged with importation of prohibited drugs in an information filed with the Regional Trial Court of Kalookan City on June 4, 1994. The offense is punishable by reclusion perpetua to death. Can Edgardo avail of plea-bargaining? [2%]

SUGGESTED ANSWER:

No, Edgardo cannot avail of plea-bargaining because the imposable penalty for his violation of the Dangerous Drugs Act (R.A. No. 6425. as amended) is reclusion perpetua to death. Section 20-A expressly provides that plea-bargaining shall not be allowed where the imposable

penalty for the violation of said law is reclusion perpetua to death. (Sec. 20-A, R.A. No. 6425, as amended).

Dangerous Drugs Act; Consummation of Sale (1996)

Pat. Buensuceso, posing as a buyer, approached Ronnie, a suspected drug pusher, and offered to buy P300 worth of shabu. Ronnie then left, came back five minutes later and handed Pat, Buensuceso an aluminum foil containing the shabu. However, before Pat, Buensuceso was able to deliver the marked money to Ronnie, the latter spotted a policeman at a distance, whom Ronnie knew to be connected with the Narcotics Command of the Police. Upon seeing the latter, Ronnie ran away but was arrested thirty minutes later by other policemen who pursued him. Under the circumstances, would you consider the crime of sale of a prohibited drug already consummated? Explain.

SUGGESTED ANSWER:

Yes, the sale of prohibited drug is already consummated although the marked money was not yet delivered. When Ronnie handed the aluminum foil containing the shabu to Pat. Buensuceso pursuant to their agreed sale, the crime was consummated. Payment of the consideration is not an element of requisite of the crime. If ever, the marked money is only evidentiary to strengthen the case of the prosecution.

Dangerous Drugs Act; Criminal Intent to Posses (2002)

A and his fiancee B were walking in the plaza when they met a group of policemen who had earlier been tipped off that A was in possession of prohibited drugs. Upon seeing the policemen and sensing that they were after him, A handed a sachet containing shabu to his fiancee B, telling her to hide it in her handbag. The policemen saw B placing the sachet inside her handbag. If B was unaware that A was a drug user or pusher or that what was inside the sachet given to her was shabu, is she nonetheless liable under the Dangerous Drugs Act? (5%)

SUGGESTED ANSWER:

No, B will not be criminally liable because she is unaware that A was a drug user or pusher or of the content of the sachet handed to her by A, and therefore the criminal intent to possess the drug in violation of the Dangerous Drugs Act is absent. There would be no basis to impute criminal liability to her in the absence of animus possidendi.

Dangerous Drugs Act; Plea-Bargaining (2004)

MNO, who is 30 years old, was charged as a drug pusher under the Comprehensive Dangerous Drugs Act of 2002. During pre-trial, he offered to plead guilty to the lesser offense concerning use of dangerous drugs. Should the Judge allow MNO's plea to the lesser offense? Explain briefly. (5%)

SUGGESTED ANSWER:

No, the Judge should not allow MNO's plea to a lesser offense, because plea-bargaining in prosecutions of drug-related cases is no longer allowed by Rep. Act No. 9165, the Comprehensive Dangerous Drugs Act of 2002, regardless of the imposable penalty.

Highway Robbery (2001)

Police Sgt. Diego Chan, being a member of the Theft and Robbery Division of the Western Police District and assigned to the South Harbor, Manila, was privy to and more or less familiar with the schedules, routes and hours of the movements of container vans, as well as the mobile police patrols, from the pier area to the different export processing zones outside Metro Manila. From time to time, he gave valuable and detailed information on these matters to a group interested in those shipments in said container vans. On several instances, using the said information as their basis, the gang hijacked and pilfered the contents of the vans. Prior to their sale to "fences" in Banawe, Quezon City and Bangkal, Makati City, the gang Informs Sgt, Chan who then inspects the pilfered goods, makes his choice of the valuable items and disposes of them through his own sources or "fences". When the highjackers were traced on one occasion and arrested, upon custodial investigation, they implicated Sgt. Chan and the fiscal charged them all, including Sgt. Chan as co-principals. Sgt. Chan, in his defense, claimed that he should not be charged as a principal but only as an accessory after the fact under P.D. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Act of 1972. Is the contention of Sgt. Chan valid and tenable? Explain, (5%)

SUGGESTED ANSWER:

No, the contention of Sgt. Chan is not valid or tenable because by express provision of P.D. 532, Section 4, a person who knowingly and in any manner, aids or protects highway robbers/brigands, such as giving them information about the movement of police officers or acquires or receives property taken by brigands, or who directly or indirectly abets the commission of highway robbery/brigandage, shall be considered as accomplice of the principal offenders and punished in accordance with the rules in the Revised Penal Code.

ALTERNATIVE ANSWER:

No, the contention of Sgt. Chan that he should be charged only as accessory after the fact is not tenable because he was a principal participant in the commission of the crime and in pursuing the criminal design.

An accessory after the fact involves himself in the commission of a crime only after the crime had already been consummated, not before, For his criminal participation in the execution of the highjacking of the container vans, Sgt. Chan is a co-principal by indispensable cooperation.

Illegal Fishing - PD 704 (1996)

Upon a laboratory examination of the fish seized by the police and agents of the Fisheries Commission, it was indubitably determined that the fish they were selling were caught with the use of explosives. Accordingly, the three vendors were criminally charged with the violation

of Section 33 of P.D. 704 which makes it unlawful for any person to knowingly possess, deal in, or sell for profit any fish which have been illegally caught. During the trial, the three vendors claimed that they bought the fish from a fishing boat which they duly identified. The prosecution however claimed that the three vendors should nevertheless be held liable for the offense as they were the ones caught in possession of the fish illegally caught. On the basis of the above facts, if you were the judge, would you convict the three fish vendors? Explain.

SUGGESTED ANSWER:

No, I would not convict the three fish vendors if I were the judge. Mere possession of such fish without knowledge of the fact that the same were caught with the use of explosives does not by itself render the seller-possessor criminally liable under P.D. 704. Although the act penalized in said Decree may be a malum prohibitum, the law punishes the possession, dealing in or selling of such fish only when "knowingly" done that the fish were caught with the use of explosives; hence criminal intent is essential. The claim by the fish vendors that they only bought the fish from fishing boats which they "duly identified", renders their possession of such fish innocent unless the prosecution could prove that they have knowledge that explosives were used in catching such fish, and the accused had knowledge thereof.

Illegal Possession of Firearms – RA 8294 (1998) Supposing a public school teacher participated in a coup d'etat using an unlicensed firearm. What crime or crimes did he commit? [2%]

SUGGESTED ANSWER:

The public school teacher committed only coup d'etat for his participation therein. His use of an unlicensed firearm is absorbed in the coup d'etat under the new firearms law (Rep. Act No. 8294). A prosecution for illegal possession of firearm under the new law is allowed only if the unlicensed firearm was not used in the commission of another crime.

Illegal Possession of Firearms & Ammunitions (2000)

A has long been wanted by the police authorities for various crimes committed by him. Acting on an information by a tipster, the police proceeded to an apartment where A was often seen. The tipster also warned the policemen that A was always armed. At the given address, a lady who introduced herself as the elder sister of A, opened the door and let the policemen in inside, the team found A sleeping on the floor. Immediately beside him was a clutch bag which, when opened, contained a .38 caliber paltik revolver and a hand grenade. After verification, the authorities discovered that A was not a licensed holder of the .38 caliber paltik revolver. As for the hand grenade, it was established that only military personnel are authorized to carry hand grenades. Subsequently, A was charged with the crime of Illegal Possession of Firearms and Ammunition. During trial, A maintained that the bag containing the unlicensed firearm and hand grenade belonged to A, his friend, and that he was not in actual possession thereof at the time he was arrested. Are the allegations meritorious? Explain. (3%)

SUGGESTED ANSWER:

A's allegations are not meritorious. Ownership is not an essential element of the crime of illegal possession of firearms and ammunition. What the law requires is merely possession, which includes not only actual physical possession but also constructive possession where the firearm and explosive are subject to one's control and management. *(People us. De Grecia, 233 SCRA 716; U.S. vs. Juan, 23 Phil. 105: People vs. Soyag, 110 Phil. 565).*

PD 46 & RA 6713 & Indirect Bribery (2006) Commissioner Marian Torres of the Bureau of internal Revenue (BIR) wrote solicitation letters addressed to the Filipino-Chinese Chamber of Commerce and Industry and to certain CEOs of various multinational corporations requesting donations of gifts for her office Christmas party. She used the Bureau's official stationery. The response was prompt and overwhelming so much so that Commissioner Torres' office was overcrowded with rice cookers, radio sets, freezers, electric stoves and toasters. Her staff also received several envelopes containing cash money for the employees' Christmas luncheon. Has Commissioner Torres committed any impropriety or irregularity? What laws or decrees did she violate? (5%)

SUGGESTED ANSWER:

Yes, Commissioner Torres violated the following:

1. RA. 6713 — Code of Conduct and Ethical Standards for Public Officials and Employees when he solicited and accept gifts (Sec. 7[d]).
2. P.D. 46 — Making it punishable for public officials and employees to receive, and for private persons to give, gifts on any occasion, including Christmas.
3. Indirect Bribery (Art. 211, Revised Penal Code) for receiving gifts offered by reason of office.

PD 46 (1994)

Gino was appointed Collector of Customs and was assigned at the Ninoy Aquino International Airport, Gerry, an importer, hosted a dinner for 100 persons at the Westin Philippine Plaza in honor of Gino. What are the offense or offenses committed by Gino and Gerry?

SUGGESTED ANSWER:

Both Gino and Gerry are liable for violation of Presidential Decree No. 46, which punishes any public official or employee who receives, directly or indirectly, and for private persons who give, offer any gift, present or valuable thing on any occasion, including Christmas, when such gift or valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors, or the giver hopes or expects to receive a favor or better treatment in the future. Being an importer, Gerry reasonably expects future favor from Gino. Included within the prohibition is the throwing of parties or entertainment in honor of the official or employee or of his immediate relatives.

PD 46 (1997)

A, who is the private complainant in a murder case pending before a Regional Trial Court Judge, gave a judge a Christmas gift, consisting of big basket of assorted canned goods and bottles of expensive wines, easily worth P10.000.00. The judge accepted the gift knowing it came from A. What crime or crimes, if any, were committed?

SUGGESTED ANSWER:

The Judge committed the crime of Indirect bribery under Art. 211 of the Revised Penal Code. The gift was offered to the Judge by reason of his office. In addition, the Judge will be liable for the violation of P.D. 46 which punishes the receiving of gifts by pubic officials and employees on occasions like Christmas.

Plunder under RA 7080; Prescriptive Period (1993)

Through kickbacks, percentages or commissions and other fraudulent schemes /conveyances and taking advantage of his position, Andy, a former mayor of a suburban town, acquired assets amounting to P10 billion which is grossly disproportionate to his lawful income. Due to his influence and connections and despite knowledge by the authorities of his Ill-gotten wealth, he was charged with the crime of plunder only after twenty
(20) years from his defeat in the last elections he participated in. 1) May Andy still be held criminally liable? Why? 2) Can the State still recover the properties and assets that he illegally acquired, the bulk of which is in the name of his wife and children? Reason out.

SUGGESTED ANSWER:

1) Andy will not be criminally liable because Section 6 of RA 7080 provides that the crime punishable under this Act shall prescribe in twenty years and the problem asked whether Andy can still be charged with the crime of plunder after 20 years.

2) Yes, because Section 6 provides that recovery of properties unlawfully acquired by public officers from them or their nominees or transferees shall not be barred by prescription, laches or estoppel.

R.A. No. 9160 Anti-Money Laundering Act (2005)

Don Gabito, a philanthropist, offered to fund several projects of the Mayor. He opened an account in the Mayor's name and regularly deposited various amounts ranging from P500,000.00 to P1 Million. From this account, the Mayor withdrew and used the money for constructing feeder roads, barangay clinics, repairing schools and for all other municipal projects. It was subsequently discovered that Don Gabito was actually a jueteng operator and the amounts he deposited were proceeds from his jueteng operations. What crime/s were committed? Who are criminally liable? Explain. (6%)

SUGGESTED ANSWER:

Don Gabito violated the Anti-Money Laundering Act (Sec. 4, R.A. No. 9160) for knowingly transacting money as property which involves or relates to the proceeds of an unlawful activity such as jueteng. In addition, he may be prosecuted for liability as ajueteng operator. (R.A. No. 9287)

The mayor who allowed the opening of an account in his name is likewise guilty for violation of the AMLA. He, knowing that the money instrument or property involves the proceeds of an unlawful activity, performs or fails to perform any act which results in the facilitation of money laundering.

Ra 3019; Preventive Suspension (1999)

A public officer was accused before the Sandiganbayan of a violation of Section 3 (e) of RA No. 3019, the Anti-Graft and Corrupt Practices Act. Just after arraignment and even before evidence was presented, the Sandiganbayan issued an order for his suspension pendente lite. The accused questioned the said Order contending that it is violative of the constitutional provision against an ex post facto law. Will you sustain the objection of the accused? Why? [2%]

(c) What pre-conditions are necessary to be met or satisfied before preventive suspension may be ordered? (2%)

SUGGESTED ANSWER:

(b) No, I will not sustain the objection of the accused. Suspension of the accused pendente lite is not violative of the constitutional provision against ex-post facto law. Ex-post facto law means making an innocent act a crime before it is made punishable.

(c) The pre-conditions necessary to be met or satisfied before a suspension may be ordered are: (1) there must be proper notice requiring the accused to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to RA 3019, as amended; and (2) there must be a determination of a valid information against the accused that warrants his suspension.

RA 3019; Preventive Suspension (2000)

A month after the arraignment of Brad Kit Commissioner of the Housing and Land Use Regulatory Board, who was charged with violation of Section 3 (h) of Republic Act 3019 [Anti-Graft and Corrupt Practices Act) before the Sandiganbayan, the Office of the Special Prosecutor filed a Motion to Suspend Accused Pendente Lite pursuant to Section 13 of the Anti-Graft Law. The Court granted the motion and suspended accused Brad Kit for a period of 90 days. Accused assailed the constitutional validity of the suspension order on the ground that it partakes of a penalty before Judgment of conviction is reached and is thus violative of his constitutional right to be presumed innocent. He also claimed that this provision of the law on suspension pendente lite applies only to elective officials and not to appointed ones like him. Rule with reasons. (5%)

SUGGESTED ANSWER:

The suspension order does not partake of a penalty and is thus not violative of Brad Kit's constitutional right to

be presumed innocent. Under the law, the accused public officers shall be suspended from office while the criminal prosecution is pending in court (Sec. 13, RA. 3019). Such preventive suspension is mandatory to prevent the accused from hampering the normal course of the investigation (Rios vs. Sandiganbayan,279 SCRA 581 (1997); Bunye vs. Escareal 226 SCRA 332 (1993)). Neither is there merit in Brad Kit's claim that the provision on suspension pendente lite applies only to elective officials and not to appointed ones like him. It applies to all public officials Indicted upon a valid information under RA. No. 3019, whether they be appointive or elective officials; or permanent or temporary employees, or pertaining to the career or noncareer service (Segovia vs. Sandiganbayan, 288 SCRA 328 [1998]).

RA 3019; Public Officer (2003)

The Central Bank (Bangko Sentral ng Pilipinas}, by a resolution of the monetary board, hires Theof Sto Tomas, a retired manager of a leading bank as a consultant. Theof later receives a valuable gift from a bank under investigation by the Central Bank. May Theof be prosecuted under Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) for accepting such a gift? Explain. 8%

SUGGESTED ANSWER:

No, Theof may not be prosecuted under Rep. Act 3019, but may be prosecuted for violation of Pres, Decree No. 46, under which such act of receiving a valuable gift is punished.

Although Theof is a "public officer" within the application of the Anti-Graft and Corrupt Practices Act (RA 3019), yet his act of receiving such gift does not appear to be included among the punishable acts under Rep. Act 3019 since he is not to intervene in his official capacity in the investigation of the bank which gave the gift. Penal laws must be strictly construed against the State. In any case, Theof is administratively liable.

ALTERNATIVE ANSWER

Yes, Theof may be prosecuted under Rep. Act 3019 because he is a "public officer" within the purview of said law, and Theof received the valuable gift from a bank which is under investigation by the Central Bank where he is employed as a "public officer". Receiving gift, directly or indirectly by a public officer from a party who has a transaction with the Government is wrong, more so when the gift-giver is under investigation by the government office to which the public officer is connected.

Ra 6713; Coverage (2001)

Robert Sy, a well known businessman and a founding member of the Makati Business Club, aside from being a classmate of the newly-elected President of the Philippines, had Investments consisting of shares of stocks in the Urban Bank, the PNB, the Rural Bank of Caloocan City and his privately-owned corporation, the RS Builders Corporation and Trans-Pacific Air. After the President had taken his oath and assumed his office, he appointed Robert as Honorary Consul to the Republic of Vietnam. Robert took his oath before the President and after furnishing the Department of Foreign Affairs with his appointment papers, flew to Saigon, now Ho Chi Min City, where he organized his staff, put up an office and stayed there for three months attending to trade opportunities and relations with local businessman. On the fourth month, he returned to the Philippines to make his report to the President. However, the Anti-Graft League of the Philippines filed a complaint against Robert for (1) falling to file his Statement of Assets and Liabilities within thirty (30) days from assumption of office; (2) failing to resign from his businesses, and (3) falling to divest his shares and investments in the banks and corporations owned by him, as required by the Code of Conduct and Ethical Standards for Public Officials and Employees. Will the complaint prosper? Explain. (5%)

SUGGESTED ANSWER:

The complaint will not prosper because the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act. No. 6713), expressly exempts those who serve the Government in an honorary capacity from filing Statements of Assets and Liabilities, and from resigning and divesting themselves of interest from any private enterprise (Secs. 8A and 9).

ALTERNATIVE ANSWER:

Yes, the complaint will prosper under Sec. 7 of the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019, as amended], which requires all public officers within 30 days from assuming public office to file a true, detailed sworn statement of assets and liabilities. Violations of this law are mala prohibita which admits of no excuses.

RA 7438-Economic Sabotage; Illegal Recruitment (2004)

RR represented to AA, BB, CC and DD that she could send them to London to work there as sales ladies and waitresses. She collected and received from them various amounts of money for recruitment and placement fees totalling P400,000. After their dates of departure were postponed several times, the four prospects got suspicious and went to POEA (Phil. Overseas Employment Authority). There they found out that RR was not authorized nor licensed to recruit workers for employment abroad. They sought refund to no avail. Is RR guilty of any grave offense? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. RR is guilty of a grave offense, having engaged in illegal recruitment constituting the offense of economic sabotage which is punishable with life imprisonment and a fine of P100.000.00.

ECONOMIC SABOTAGE is an offense defined in 38(b) of the Labor Code, as amended by Pres. Decree No. 2018, which is incurred when the illegal recruitment is carried out in large scale or by a syndicate. It is in a large scale when there are three or more aggrieved parties, individually or as a group. And it is committed by a syndicate when three or more persons conspire or

cooperate with one another in carrying out the illegal transaction, scheme or activity.

RA 7610 – Child Exploitation (2006)

Aling Maria received an urgent telephone call from Junior, her eldest son, asking for P2,000.00 to complete his semestral tuition fees preparatory to his final exams in Commerce. Distressed and disturbed, she borrowed money from her compadre Mang Juan with the assurance to pay him within 2 months. Two months lapsed but Aling Maria failed to settle her obligation. Mang Juan told Aling Maria that she does not have to pay the loan if she will allow her youngest 10-year old daughter Annie to work as a housemaid in his house for 2 months at Pl,000.00 a month. Despite Aling Maria's objection, Mang Juan insisted and brought Annie to his house to work as a maid.

1. Was a crime committed by Mang Juan when he brought Annie to his house as maid for the purpose of repaying her mother's loan? (2.5%)

SUGGESTED ANSWER:

Yes. Mang Juan committed the crime of exploitation of child labor which is committed by any persons 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 latter's will, retainh im in his service (Art. 273, Revised Penal Code). He can also be liable as an employer for the employment of a minor below 15 yrs. old, under Sec. 12, Art. 8 of RA. 7610.

2. If Aling Maria herself was made to work as a house-maid in Mang Juan's household to pay her loan, did he commit a crime? (2.5%)

SUGGESTED ANSWER:

Yes. Mang Juan committed the crime of involuntary servitude for rendering services under compulsion and payment of debts. This is committed by any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm laborer (Art. 274, Revised Penal Code)