

**BAR 2011 – CRIMINAL LAW  
ANSWERS**

1. Isabel, a housemaid, broke into a pawnshop intent on stealing items of jewelry in it. She found, however, that the jewelry were in a locked chest. Unable to open it, she took the chest out of the shop. What crime did she commit?
  - A. Robbery in an uninhabited place or in a private building
  - B. Theft
  - C. Robbery in an inhabited house or public building.
  - D. Qualified theft
  
2. The alternative circumstance of relationship shall NOT be considered between
  - A. mother-in-law and daughter-in-law.
  - B. adopted son and legitimate natural daughter.
  - C. aunt and nephew.
  - D. stepfather and stepson.
  
3. Arthur, Ben, and Cesar quarrelled with Glen while they were at the latter's house. Enraged, Arthur repeatedly stabbed Glen while Ben and Cesar pinned his arms. What aggravating circumstance if any attended the killing of Glen?
  - A. Evident premeditation.
  - B. None.
  - C. Abuse of superior strength.
  - D. Treachery.
  
4. The presence of a mitigating circumstance in a crime
  - A. increases the penalty to its maximum period.
  - B. changes the gravity of the offense.
  - C. affects the imposable penalty, depending on other modifying circumstances.
  - D. automatically reduces the penalty.
  
5. He is an accomplice who
  - A. agreed to serve as a lookout after his companions decided to murder the victim.
  - B. watched quietly as the murderer stabbed his victim.
  - C. helped the murderer find the victim who was hiding to avoid detection.
  - D. provided no help, when he can, to save the victim from dying.

6. Principles of public international law exempt certain individuals from the Generality characteristic of criminal law. Who among the following are NOT exempt from the Generality rule?

- A. Ministers Resident
- B. Commercial Attache of a foreign country
- C. Ambassador
- D. Chiefs of Mission

7. As a modifying circumstance, insanity

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

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

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

9. A police officer surreptitiously placed a marijuana stick in a student's pocket and then arrested him for possession of marijuana cigarette. What crime can the police officer be charged with?

- A. None, as it is a case of entrapment
- B. Unlawful arrest
- C. Incriminating an innocent person
- D. Complex crime of incriminating an innocent person with unlawful arrest

**\*\* Note:** The correct answer is not included in the choices. The correct answer is "planting of evidence."

Section 29 of RA 9165, The Comprehensive Dangerous Drugs Act of 2002, specifically punishes the act of planting dangerous drugs. Section 29 provides that any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 3(cc), RA 9165 defines planting of evidence as the willful act of any person of maliciously and surreptitiously inserting,

placing, adding or attaching, directly or indirectly, through any overt or covert act, whatever quantity of any dangerous drug and/or controlled precursor and essential chemical in the person, house, effects or in the immediate vicinity of an innocent individual for the purpose of implicating, incriminating or imputing the commission of any violation of RA 9165.

10. The police officer in civilian clothes asked X where he can buy shabu. X responded by asking the officer how much of the drug he needed. When he told him, X left, returned after a few minutes with the shabu, gave it to the officer, and took his money. X is

- A. liable for selling since the police operation was a valid entrapment.
- B. not liable for selling since the police operation was an invalid entrapment.
- C. liable for selling since the police operation was a valid form of instigation.
- D. not liable since the police operation was an invalid instigation.

11. Plaintiff X said in his civil complaint for damages that defendant Y, employing fraud, convinced him to buy a defective vehicle. Y filed a criminal action for libel against X for maliciously imputing fraud on him. Will the action prosper if it turns out that the civil complaint for damages was baseless?

- A. No, since pleadings filed in court are absolutely privileged.
- B. No, since malice is not evident.
- C. Yes, given the fact that the imputation of fraud was baseless.
- D. Yes, parties must state the truth in their pleadings.

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

- A. the act is criminal at the time of its commission and recognized as such at the time of its commission but the penalty therefor is prescribed in a subsequently enacted law.
- B. the act is criminal and punished under and pursuant to common law.
- C. there is a crime for as long as the act is inherently evil.
- D. crime is a product of the law.

13. X, a tabloid columnist, wrote an article describing Y, a public official, as stupid, corrupt, and having amassed ill-gotten wealth. X relied on a source from Y's own office who fed him the information. Did X commit libel?

- A. Yes, since the article was libelous and inconsistent with good faith and reasonable care.

- B. No, since X but made a fair commentary on a matter of public interest.
- C. No, since X's article constitutes privileged communication.
- D. No, since he wrote his article under the freedom enjoyed by the press.

14. The husband has for a long time physically and mentally tortured his wife. After one episode of beating, the wife took the husband's gun and shot him dead. Under the circumstances, her act constitutes

- A. mitigating vindication of grave offense.
- B. battered woman syndrome, a complete self-defense.
- C. incomplete self-defense.
- D. mitigating passion and obfuscation.

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

- A. the owner of property sells a property and subsequently rescinds the sale.
- B. the real property subject of the sale does not exist.
- C. the property was mortgaged for a usurious contract of loan.
- D. the owner disposes of his encumbered real property as if it is free from encumbrances.

16. X, a police officer, placed a hood on the head of W, a suspected drug pusher, and watched as Y and Z, police trainees, beat up and tortured W to get his confession. X is liable as

- A. as accomplice in violation of the Anti-Torture Act.
- B. a principal in violation of the Anti-Torture Act.
- C. a principal in violation of the Anti-Hazing Law.
- D. an accomplice in violation of the Anti-Hazing Law.

17. Dr. Chow, a government doctor, failed to submit his Daily Time Record (DTR) from January to March 2000 and did not get approval of his sick leave application for April because of evidence that he was actually moonlighting elsewhere. Thus, the medical Director caused the withholding of his salary for the periods in question until he submitted his DTRs in May 2000. Can Dr. Chow prosecute the medical director for causing him undue injury in violation of the Anti Graft and Corrupt Practices Act?

- A. Yes, since the medical Director acted with evident bad faith.
- B. No, since the medical director has full discretion in releasing the salary of government doctors.
- C. Yes, since his salary was withheld without prior hearing.

D. No, since Dr. Chow brought it upon himself, having failed to submit the required DTRs.

18. When a penal law is absolutely repealed such that the offense is decriminalized, a pending case charging the accused of the repealed crime is to be

- A. prosecuted still since the charge was valid when filed.
- B. dismissed without any precondition.
- C. dismissed provided the accused is not a habitual delinquent.
- D. prosecuted still since the offended party has a vested interest in the repealed law.

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

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

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

- A. one count of grave slander against the woman who uttered the more insulting expressions.
- B. grave slander against the woman who started it and light slander against the other woman.
- C. two separate counts of light slander, one for each woman.
- D. two separate counts of grave slander, one against each of them.

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

- A. occupation or usurpation of personal property.
- B. civil damages only.
- C. theft.
- D. other deceits.

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

- A. dolo.
- B. culpa.
- C. tortious crimes.
- D. quasi delict.

23. To mitigate his liability for inflicting physical injury to another, an accused with a physical defect must prove that such defect restricted his freedom of action and understanding. This proof is not required where the physical defect consists of

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

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

- A. the mother killing her 2-day old child to conceal her dishonor.
- B. the accused committing theft out of extreme poverty.
- C. the accused raping his victim in extreme state of passion.
- D. the accused surrendering the weapon he used in his crime to the authorities.

25. Three men gave Arnold fist blows and kicks causing him to fall. As they surrounded and continued hitting him, he grabbed a knife he had in his pocket and stabbed one of the men straight to the heart. What crime did Arnold commit?

- A. Homicide with incomplete self-defense, since he could have run from his aggressors.
- B. Homicide, since he knew that stabbing a person in the heart is fatal.
- C. Homicide mitigated by incomplete self-defense, since stabbing a person to the heart is excessive.
- D. No crime, since he needed to repel the aggression, employing reasonable means for doing so.

26. A, B, and C agreed to rob a house of its cash. A and B entered the house while C remained outside as lookout. After getting the cash, A and B decided to set the house on fire to destroy any evidence of their presence. What crime or crimes did C commit?

- A. Robbery and arson since arson took place as an incident of the robbery.
- B. Robbery and arson since C took no step to stop the arson.
- C. Just for robbery since he only agreed to it and served as lookout.
- D. Accomplice to robbery since his role in the crime was minimal.

27. X, a court employee, wrote the presiding judge a letter, imputing to Y, also a court employee, the act of receiving an expensive gift from one of the parties in a pending case. Because of

this, Y accused X of libel. Does Y need to prove the element of malice in the case?

- A. No, since malice is self-evident in the letter.
- B. Yes, malice is not presumed since X wrote the letter to the presiding judge who has a duty to act on what it states.
- C. No, since malice is presumed with respect to defamatory imputations.
- D. Yes, since malice is not presumed in libel.

28. X killed B, mistakenly believing that she was his wife, upon surprising her having sex with another man in a motel room. What is the criminal liability of X?

- A. None since he killed her under exceptional circumstances.
- B. None since he acted under a mistake of fact.
- C. Parricide.
- D. Homicide.

29. X draws a check upon request of Y, the payee, who told X that he would merely show the check to his creditor to gain more time to pay his account. The check bounced upon presentation by the creditor. Under the circumstances, who can be prosecuted for estafa based on the dishonored check?

- A. Y as the one who negotiated the check contrary to the agreement
- B. X as the drawer of the check
- C. Both X and Y based on conspiracy
- D. None

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

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

31. It is a matter of judicial knowledge that certain individuals will kill others or commit serious offenses for no reason at all. For this reason,

- A. lack of motive can result in conviction where the crime and the accused's part in it are shown.

- B. motive is material only where there is no evidence of criminal intent.
- C. lack of motive precludes conviction.
- D. the motive of an offender is absolutely immaterial.

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

- A. 15 years and below acting without discernment.
- B. above 15 years but below 18 acting without discernment.
- C. below 18 years acting with discernment.\*\*
- D. 18 years old at the time of the commission of the crime acting with discernment.

\*\* **NOTE:** This should be “above 15 years but below 18 years acting with discernment

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

- A. entered the house using false keys.
- B. although armed did not fire their weapons.
- C. entered through a window without breaking it.
- D. although armed took property valued at only P200.

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

- A. as a principal to the crime of robbery.
- B. as an accessory to the crime of robbery.
- C. as a principal to the crime of obstruction of justice.
- D. as an accessory to the crime of obstruction of justice.

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

- A. The victim is killed as a consequence of the detention.
- B. The offender is a public officer.
- C. Ransom is demanded.
- D. The victim is raped.

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

- A. any public officer.
- B. a public officer officially entrusted with the document.
- C. private individuals who executed the same.
- D. private individuals.

37. Dagami concealed Bugna's body and the fact that he killed him by setting Bugna's house on fire. What crime or crimes did Dagami commit?

- A. Murder, the arson being absorbed already
- B. Separate crimes of murder and arson
- C. Arson, the homicide being absorbed already
- D. Arson with murder as a compound crime

38. Sam wrote a letter to his friends stating that Judge Odon loves obscene magazines and keeps these in his desk. Charged with libel, can Sam present proof that Judge Odon indeed loves obscene magazines and keeps these in his desk?

- A. No, since the imputation is not related to the duties of a judge.
- B. No, since Sam does not impute a crime to Judge Odon.
- C. No, since Sam imputes the commission of a crime to Judge Odon.
- D. Yes, since truth can be a valid defense in libel.

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

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

40. Which of the following statements constitute Inciting to Sedition?

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

41. Culpa can either be a crime by itself or a mode of committing a crime. Culpa is a crime by itself in

- A. reckless imprudence resulting in murder.
- B. medical malpractice.\*\*
- C. serious physical Injuries thru reckless imprudence.

D. complex crime of reckless imprudence resulting in serious physical injuries.

**\*\* NOTE:** Letter D is also a correct answer based on the decision of the Supreme Court in *Ivler vs. Modesto-San Pedro* (GR#172716, 11/172010)

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

A. Following the killing of his adopted brother, P went to the place where it happened and killed S whom he found there.

B. X kills Y who attempted to rape X's wife.

C. P severely maltreats S, a septuagenarian, prompting the latter to kill him.

D. M killed R who slandered his wife.

43. To save himself from crashing into an unlighted truck abandoned on the road, Jose swerved his car to the right towards the graveled shoulder, killing two bystanders. Is he entitled to the justifying circumstance of state of necessity?

A. No, because the bystanders had nothing to do with the abandoned truck on the road.

B. No, because the injury done is greater than the evil to be avoided.

C. Yes, since the instinct of self-preservation takes priority in an emergency.

D. Yes, since the bystanders should have kept off the shoulder of the road.

44. The accused was shocked to discover his wife and their driver sleeping in the master's bedroom. Outraged, the accused got his gun and killed both. Can the accused claim that he killed the two under exceptional circumstances?

A. No, since the accused had time to reflect when he got his gun.

B. No, since the accused did not catch them while having sexual intercourse.

C. Yes, since the wife and their driver desecrated the marital bed.

D. Yes, since the scene shows that they had an intimate relationship.

45. The three accused forcibly took their victim from his car but the latter succeeded in freeing himself from their grip. What crime did the three accused commit?

A. forcible abduction.

B. frustrated kidnapping.

C. attempted kidnapping.

D. grave coercion.

46. Deeply enraged by his wife's infidelity, the husband shot and killed her lover. The husband subsequently surrendered to the police. How will the court appreciate the mitigating circumstances of (i) passion or obfuscation, (ii) vindication of a grave offense, and (iii) voluntary surrender that the husband invoked and proved?

A. It will appreciate passion or obfuscation and voluntary surrender as one mitigating circumstance and vindication of a grave offense as another.

B. It will appreciate all three mitigating circumstances separately.

C. It will appreciate the three mitigating circumstances only as one.

D. It will appreciate passion or obfuscation and vindication of a grave offense as just one mitigating circumstance and voluntary surrender as another.

47. The aggravating circumstance of uninhabited place is aggravating in murder committed

A. on a banca far out at sea.

B. in a house located in cul de sac.

C. in a dark alley in Tondo.

D. in a partly occupied condominium building.

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

A. to be elected to a public office.

B. to vote in any popular election for a public office.

C. to vote in a plebiscite.

D. to hold any public office.

49. Without meaning anything, Z happened to stare into the eye of one of four men hanging out by a store which he passed. Taking offense, the four mauled and robbed him of his wages. Z went home, took a knife, and stabbed one of his attackers to death. Charged with murder, Z may raise the mitigating circumstance of

A. praeter intentionem.

B. incomplete self-defense preceded by undue provocation.

C. passion or obfuscation.

D. complete self-defense.

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

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

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

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

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

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

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

- A. Violation of the Trademark Law committed by an alien in the Philippines.
- B. Forgery of US bank notes committed in the Philippines.
- C. Crime committed by a Filipino in the disputed Spratly's Island.
- D. Plunder committed at his place of assignment abroad by a Philippine public officer.

54. X, Y and Z agreed among themselves to attack and kill A, a police officer, but they left their home-made guns in their vehicle before approaching him. What crime have they committed?

- A. Conspiracy to commit indirect assault.
- B. Attempted direct assault.
- C. Conspiracy to commit direct assault.
- D. Illegal possession of firearms.

55. On hearing a hospital ward patient on the next bed, shrieking in pain and begging to die, Mona shut off the oxygen that was sustaining the patient, resulting in his death. What crime if any did Mona commit?

- A. Homicide.

- B. Murder if she deliberated on her action.
- C. Giving Assistance to Suicide.
- D. Euthanasia.

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

- A. treason.
- B. piracy.
- C. espionage.
- D. rebellion.

57. Motive is generally IMMATERIAL in determining criminal liability EXCEPT when

- A. several offenders committed the crime but the court wants to ascertain which of them acted as leader.
- B. the evidence of the crime consists of both direct and circumstantial evidence.
- C. ascertaining the degree of penalty that may be imposed on the offender.
- D. the evidence of guilt of the accused is circumstantial.

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

- A. The check was returned unpaid with stamp "stop payment," although the drawer's deposit was sufficient.
- B. The check, drawn and issued in the Philippines, was dishonored by the drawee bank in a foreign country.
- C. The check was presented to the bank for payment 6 months after the date of issue.
- D. The drawer of the dishonored check paid its value within 5 days from notice of dishonor.

59. X and his step-father have a long-standing enmity. One day, irked by an argument with his step-father, X smashed the windshield of his step-father's brand new Audi sports car. X is liable for

- A. malicious mischief.
- B. malicious mischief with the alternative mitigating circumstance of relationship.
- C. malicious mischief with the alternative aggravating circumstance of relationship.
- D. the civil damage he caused.

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

A. if certain crimes committed on the same occasion can be complexed.

B. the correct penalty for crimes committed through reckless imprudence.

C. whether the offender is liable as an accomplice.

D. what stage of the felony has been reached.

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

A. he is found to have acted with discernment.

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

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

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

62. Mr. P owns a boarding house where he knowingly allowed children to be videotaped while simulating explicit sexual activities. What is Mr. P's criminal liability, if any?

A. Corruption of minors under the Penal Code

B. Violation of the Child Pornography Act

C. Violation of the Child Abuse Law

D. None

63. W allowed a man to have sex with her thinking that he was her husband. After realizing that the man was not her husband, W stabbed him to death. Under the circumstances, the mitigating circumstance in attendance constitutes

A. defense of honor.

B. immediate vindication of a grave offense.

C. passion or obfuscation.

D. self-defense.

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

A. discovery of the second marriage by the offended spouse.

B. registration of the second marriage in the Local Civil Registry.

C. celebration or solemnization of the second marriage.

D. discovery of the second marriage by the authorities.

65. After properly waiving his Miranda rights, the offender led the police to where he buried the gun he used in shooting the victim. How does this affect his liability?

A. This serves as an analogous mitigating circumstance of voluntary surrender.

B. It has no effect at all since the law provides none.

- C. He is considered to have confessed to murder.
- D. This serves as aggravating circumstance of concealment of weapon.

66. A qualifying aggravating circumstance

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

67. X inflicted serious injuries on Y. Because of delay in providing medical treatment to Y, he died. Is X criminally liable for the death of Y?

- A. Yes because the delay did not break the causal connection between X's felonious act and the injuries sustained by Y.
- B. Yes because any intervening cause between the infliction of injury and death is immaterial.
- C. No because the infliction of injury was not the immediate cause of the death.
- D. No because the delay in the administration of the medical treatment was an intervening cause.

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

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

69. X inflicted violent kicks on vital parts of E's body. E nevertheless was able to flee for fear of his life. Refusing to undergo treatment for his injuries, E died 3 days later. Is X liable for E's death?

- A. No, since kicks on the body cannot cause death.
- B. No, since it took too long for death to occur.
- C. Yes, since E cannot be compelled to undergo medical treatment.
- D. Yes, since it was a natural result of the injuries X inflicted on E.

70. A criminal action for rape is extinguished when the offender is forgiven by

- A. the offender's wife who herself is the rape victim.
- B. his wife for having raped another woman.
- C. the rape victim's husband.

D. he rape victim herself.

71. A battered woman claiming self-defense under the Anti Violence against Women and Children must prove that the final acute battering episode was preceded by

- A. 3 battering episodes.
- B. 4 battering episodes.
- C. 5 battering episodes.
- D. 2 battering episodes.

72. A special complex crime is a composite crime

- A. made up of 2 or more crimes defined in the Penal Code.
- B. with its own definition and special penalty provided by the Penal Code.
- C. with its own definition and special penalty provided by a special penal law.
- D. made up of 2 or more crimes defined in the Penal Code and special penal laws.

73. What court has jurisdiction when an Indonesian crew murders the Filipino captain on board a vessel of Russian registry while the vessel is anchored outside the breakwaters of the Manila bay?

- A. The Indonesian court.
- B. The Russian court.
- C. The Philippine court.
- D. Any court that first asserts jurisdiction over the case.

74. X, intending to kill Y, a store owner, fired at Y from the street, but the shot killed not only Y but also Z who was in the store. As a case of aberratio ictus, it is punishable as a

- A. complex crime proper.
- B. special complex crime.
- C. continuing crime.
- D. compound crime.

75. A proposal to commit a felony is punishable only when the law specifically provides a penalty for it as in the case of proposal to commit

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

## **BAR 2012 – CRIMINAL LAW ANSWERS**

### **MULTIPLE CHOICE QUESTIONS:**

1. The wife of AAA predeceased his mother-in-law. AAA was accused of defrauding his mother-in-law under a criminal information for estafa, but the actual recital of facts of the offense charged therein, if proven, would constitute not only the crime of estafa, but also falsification of public document as a necessary means for committing estafa. AAA invokes the absolatory cause of relationship by affinity. Which statement is most accurate?

a) The relationship by affinity created between AAA and the blood relatives of his wife is dissolved by the death of his wife and the absolatory cause of relationship by affinity is therefore no longer available to AAA.

b) The death of spouse does not sever the relationship by affinity which is an absolatory cause available to AAA for estafa through falsification of public document.

c) If AAA commits in a public document the act of falsification as a necessary means to commit estafa, the relationship by affinity still subsists as an absolatory cause for estafa which should be considered separately from the liability for falsification of public document because there is no specific penalty prescribed for the complex crime of estafa through falsification of public document.

d) Considering that under the given situation, the two (2) crimes of estafa and falsification of public document are not separate crimes but component crimes of the single complex crime of estafa and falsification of public document, the absolatory cause of relationship by affinity is not available to AAA. (\* Intestate estate of Manolita Gonzales vda. De Carungcong vs. People, February 11, 2010)

2. Under which of the following circumstances is an accused not liable for the result not intended?

a) Accused is not criminally liable for the result not intended when there is mistake in the identity of the victim.

b) Accused is not criminally liable for the result not intended when there is mistake in the blow.

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

d) Accused is not criminally liable for the result not intended when there is mistake of fact constituting an involuntary act.

3. Can there be a frustrated impossible crime?

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

4. FF and his two (2) sons positioned themselves outside the house of the victim. The two (2) sons stood by the stairs in front of the house, while the father waited at the back. The victim jumped out of the window and was met by FF who instantly hacked him. The two (2) sons joined hacking the victim to death. They voluntarily surrendered to the police. How will the attendant circumstances be properly appreciated?

- a) Treachery and abuse of superior strength qualify the killing to murder.
- b) Only treachery qualifies the killing to murder because abuse of superior strength is absorbed by treachery.
- c) Treachery is the qualifying aggravating circumstance, while abuse of superior strength is treated as a generic aggravating circumstance.
- d) The qualifying circumstance of treachery or abuse of superior strength can be offset by the mitigating circumstance of voluntary surrender.

5. Which of the following circumstances may be taken into account for the purpose of increasing the penalty to be imposed upon the convict?

- a) Aggravating circumstances which in themselves constitute a crime specially punishable by law.
- b) Aggravating circumstances which are inherent in the crime to such a degree that they must of necessity accompany the crime.
- c) Aggravating circumstances which arise from the moral attributes of the offender.
- d) Aggravating circumstances which are included by the law in defining a crime.

6. Who among the following convicts are not entitled to the benefits of the Indeterminate Sentence Law?

- a) Those who are recidivists.
- b) Those whose maximum term of imprisonment exceeds one (1) year.

- c) Those convicted of inciting to sedition.
- d) Those convicted of misprision of treason.

7. Proposal to commit felony is punishable only in cases in which the law specifically provides a penalty therefor. Under which of the following instances are proponents NOT liable?

- a) Proposal to commit coup d'etat.
- b) Proposal to commit sedition.
- c) Proposal to commit rebellion.
- d) Proposal to commit treason.

8. AA misrepresented to the complainant that he had the power, influence, authority and business to obtain overseas employment upon payment of placement fee. AA duly collected the placement fee from complainant. As per certification of the Philippine Overseas Employment Administration, AA did not possess any authority or license for overseas employment. Is it proper to file two (2) separate Informations for illegal recruitment under the Labor Code and for estafa by means of deceit?

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

9. When are light felonies punishable?

- a) Light felonies are punishable in all stages of execution.
- b) Light felonies are punishable only when consummated.
- c) Light felonies are punishable only when consummated, with the exception of those committed against persons or property.
- d) Light felonies are punishable only when committed against persons or property.

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

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

11. For treachery to qualify killing to murder, the evidence must show:

- a) The time when the accused decided to employ treachery, the overt act manifestly indicating that he clung to such determination, and a sufficient lapse of time between the decision and the execution, allowing him to reflect upon the consequence of his act.
- b) Unlawful aggression, reasonable necessity of the means to prevent or repel the aggression, and lack of sufficient provocation on the part of the victim.
- c) That the accused employed such means, methods or manner to ensure his safety from the defensive or retaliatory acts of the victim, and the mode of attack was consciously adopted.
- d) Actual sudden physical assault or threat to inflict real imminent injury to an unsuspecting victim.

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

- a) The woman who tried to commit suicide is not criminally liable because the suicide intended was not consummated.
- b) The woman who tried to commit suicide is criminally liable for unintentional abortion which is punishable when caused by violence.
- c) The woman who tried to commit suicide is criminally liable for abortion that resulted due to the poison that she had taken to commit suicide.
- d) The woman who tried to commit suicide incurs no criminal liability for the result not intended.

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

- a) Twelve (12) years of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum. (\* *People vs. Recto*, GR 129069, October 17, 2001)
- b) Ten (10) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

- c) Eight (8) years of *prision mayor* as minimum to eighteen (18) years and four (4) months of *reclusion temporal* as maximum.
- d) Twelve (12) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

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

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

15. Is the crime of theft committed by a person who, with intent to gain, takes a worthless check belonging to another without the latter's consent?

- a) Yes. All the elements of the crime of theft are present: that there be taking of personal property; that the property belongs to another; and that the taking be done with intent to gain and without the consent of the owner.
- b) No. The taking of the worthless check, which has no value, would not amount to the crime of theft because of the legal impossibility to commit the intended crime. (\* Jacinto vs. People, GR 162540, July 13, 2009)
- c) Yes. Theft is committed even if the worthless check would be subsequently dishonored because the taker had intent to gain from the check at the time of the taking.
- d) Yes. Theft is committed because the factual impossibility to gain from the check was not known to the taker or beyond his control at the time of taking.

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

- a) B is a quasi-recidivist because he was serving sentence when found in possession of an unlicensed firearm.
- b) B is not a quasi-recidivist because the offense for which he was serving sentence is different from the second offense.
- c) B is not a quasi-recidivist because the second offense is not a felony.

d) B is not a quasi-recidivist because the second offense was committed while still serving for the first offense.

17. What crime is committed by one who defrauds another by taking undue advantage of the signature of the offended party in a blank check and by writing the payee and amount of the check to the prejudice of the offended party?

- a) estafa with unfaithfulness or abuse of confidence;
- b) estafa by false pretense;
- c) estafa through fraudulent means;
- d) estafa by other deceits.

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

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

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

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

20. What is the crime committed by any person who, without reasonable ground, arrests or detains another for the purpose of delivering him to the proper authorities?

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

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

- a) Yes. A surrendered to the Barangay Chairman who is a person in authority.
- b) Yes. The surrender of A would save the authorities the trouble and expense for his arrest.
- c) No. A did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killing or to save the

authorities the trouble and expenses necessary for his search and capture. (\* *People vs. Del Castillo*, GR 169084, January 18, 2012)

d) No. The surrender to the Barangay Chairman is not a surrender to the proper authorities.

22. Who among the following is liable for estafa?

a) The seller of a laptop computer who failed to inform the buyer that the laptop had a defect. (\* *Estafa under Art. 318, Other Deceits, RPC – Guinhawa vs. People*, GR 162822, August 25, 2005)

b) The person who ran away with a cell phone which was handed to him upon his pretense that he had to make an emergency call.

c) The person who assured he will pay interest on the amount but failed to do so as promised.

d) The son who induced his father to buy from him a land which the son is no longer the owner.

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

a) qualifying circumstance;

b) aggravating circumstance;

c) modifying circumstance;

d) analogous circumstance.

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

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

b) There being no indication of having acted with discernment, A, B and C are exempt from criminal liability, subject to appropriate programs in consultation with the person having custody over the child in conflict with the law or the local social welfare and development officer.

c) Considering the given facts which manifest discernment, A, B and C are not exempt from criminal liability and should be charged with the complex crime of robbery with homicide, subject to automatic suspension of sentence upon finding of guilt.

d) Under the given facts, A, B and C are not exempt from criminal liability because they conspired to commit robbery for which they should be collectively charged as principals, and in addition, B should be separately charged with homicide for the death of G, subject to diversion programs for children over 15 and under 18 who acted with discernment.

25. The guard was entrusted with the conveyance or custody of a detention prisoner who escaped through his negligence. What is the criminal liability of the escaping prisoner?

a) The escaping prisoner does not incur criminal liability.

b) The escaping prisoner is liable for evasion through negligence.

c) The escaping prisoner is liable for conniving with or consenting to, evasion.

d) The escaping prisoner is liable for evasion of service of sentence.

26. What crime is committed when a person assumes the performance of duties and powers of a public office or employment without first being sworn in?

a) anticipation of duties of a public office;

b) usurpation of authority;

c) prohibited transaction;

d) unlawful appointment.

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

a) abandonment of office or position;

b) qualified abandonment of office;

c) misprision of treason;

d) negligence in the prosecution of offense.

28. The key element in a crime of parricide other than the fact of killing is the relationship of the offender to the victim. Which one of the following circumstances constitutes parricide?

a) Offender killing the illegitimate daughter of his legitimate son.

b) Offender killing his illegitimate grandson.

c) Offender killing his common-law wife.

d) Offender killing his illegitimate mother.

29. What is the minimum age of criminal responsibility?

- a) fifteen (15) years old or under;
- b) nine (9) years old or under;
- c) above nine (9) years old and under fifteen (15) who acted with discernment;
- d) above fifteen ( 15) years old and under eighteen ( 18) who acted with discernment.

30. When the adoption of a child is effected under the Inter-Country Adoption Act for the purpose of prostitution, what is the proper charge against the offender who is a public officer in relation to the exploitative purpose?

- a) acts that promote trafficking in persons;
- b) trafficking in persons;
- c) qualified trafficking in persons;
- d) use of trafficked person.

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

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

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

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

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

- a) two (2) years;
- b) six (6) years;
- c) one (1) year;
- d) three (3) years.

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

- a) The mayor is criminally liable for violation of domicile.
- b) The mayor is criminally liable for expulsion.
- c) The mayor is criminally liable for Grave coercion.
- d) The mayor incurs no criminal liability because he merely wants to protect the youth against the indecency of the prostitutes.

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

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

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

- a) disloyalty of public officers or employees;
- b) rebellion;
- c) conspiracy to commit rebellion;
- d) dereliction of duty.

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

- a) inciting to sedition;
- b) inciting to rebellion or insurrection;
- c) crime against legislative body;
- d) unlawful use of means of publication or unlawful utterances.

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

- a) sedition;
- b) coup d'etat;
- c) insurrection; (or rebellion, Art. 134, RPC)
- d) public disorder.

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

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

40. What is the criminal liability, if any, of a police officer who, while Congress was in session, arrested a member thereof for committing a crime punishable by a penalty higher than *prision mayor*?

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

41. What is the proper charge against a group of four persons who, without public uprising, employ force to prevent the holding of any popular election?

- a) sedition;
- b) disturbance of public order;
- c) grave coercion;
- d) direct assault.

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

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

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

- a) espionage;
- b) disloyalty;
- c) treason;
- d) violation of neutrality.

44. A foreigner residing in Hong Kong counterfeits a twenty-peso bill issued by the Philippine Government. May the foreigner be prosecuted before a civil court in the Philippines?

- a) No. The provisions of the Revised Penal Code are enforceable only within the Philippine Archipelago.
- b) No. The Philippine Criminal Law is binding only on persons who reside or sojourn in the Philippines.
- c) No. Foreigners residing outside the jurisdiction of the Philippines are exempted from the operation of the Philippine Criminal Law.
- d) Yes. The provisions of the Revised Penal Code are enforceable also outside the jurisdiction of the Philippines against those who should forge or counterfeit currency notes of the Philippines or obligations and securities issued by the Government of the Philippines.

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

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

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

- a) The jailer should be charged with maltreatment of prisoner and serious physical injuries.
- b) The jailer should be charged with serious physical injuries only.
- c) The jailer should be charged with complex crime of maltreatment of prisoner with serious physical injuries.
- d) The jailer should be charged with maltreatment of prisoner only.

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

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

48. What is the proper charge against a lawyer who reveals the secrets of his client learned by him in his professional capacity?

- a) The lawyer should be charged with revelation of secrets of private individual.
- b) The lawyer should be charged with betrayal of trust.
- c) The lawyer should be charged with unauthorized revelation of classified materials.
- d) The proper charge against the lawyer should be revealing secrets with abuse of office.

49. AB was driving a van along a highway. Because of her recklessness, the van hit a car which had already entered the intersection. As a result, CD who was driving the car suffered physical injuries, while damage to his car amounted to P8,500.00. What is the proper charge against AB?

- a) AB should be charged with complex crime of reckless imprudence resulting in damage to property with slight physical injuries.
- b) AB should be charged with reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in damage to property. \*\*

- c) AB should be charged with complex crime of slight physical injuries with damage to property.
- d) AB should be charged with slight physical injuries and reckless imprudence resulting in damage to property.

**\*\*Note:** The SC in *Ivler vs. Modesto-San Pedro (GR#172716, 11/172010)* rules that: "Reckless Imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes, hence, conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various consequences. xxx xxx xxx The law penalizes thus the negligent or careless act, not the result thereof. xxx xxx xxx And as the careless act is single, whether the injurious result should affect one person or several persons, the offense criminal negligence remains one and the same, and cannot be split into different crimes and prosecutions. xxx xxx xxx")

50. What crime is committed by one who, having received money, goods or any other personal property in trust or on commission, or for administration, defrauds the offended party by denying receipt of such money, goods or other property?

- a) He commits violation of the Trust Receipt Law.
- b) He commits estafa through fraudulent means.
- c) He commits estafa by false pretenses.
- d) He commits estafa with unfaithfulness or abuse of confidence.

51. What is the criminal liability, if any, of AAA who substitutes for a prisoner serving sentence for homicide by taking his place in jail or penal establishment?

- a) AAA is criminally liable for delivering prisoner from jail and for using fictitious name.
- b) AAA is criminally liable as an accessory of the crime of homicide by assisting in the escape or concealment of the principal of the crime.
- c) AAA is criminally liable for infidelity in the custody of prisoners.
- d) AAA is criminally liable for misrepresentation or concealing his true name.

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

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

53. What is the criminal liability, if any, of a private person who enters the dwelling of another against the latter's will and by means of violence or intimidation for the purpose of preventing some harm to himself?

- a) The private person is criminally liable for qualified trespass to dwelling.
- b) The private person is criminally liable for simple trespass to dwelling.
- c) The private person incurs no criminal liability.
- d) The private person is criminally liable for light threats.

54. AAA was convicted of theft by a Manila Court and sentenced to a straight penalty of one (1) year of *prision correccional*. After serving two (2) months of the sentence, he was granted conditional pardon by the Chief Executive. One of the conditions of the pardon was for him not to be found guilty of any crime punishable by the laws of the country. He subsequently committed robbery in Pasay City. Can the Manila Court require AAA to serve the unexpired portion of the original sentence?

- a) Yes. The Manila Court has the authority to recommit AAA to serve the unexpired portion of the original sentence in addition to the penalty for violation of conditional pardon.
- b) No. The penalty remitted by the conditional pardon is less than six (6) years.
- c) Yes. The penalty for violation of conditional pardon is the unexpired portion of the punishment in the original sentence.
- d) No. AAA must first be found guilty of the subsequent offense before he can be prosecuted for violation of conditional pardon.

55. What is the criminal liability of a person who knowingly and in any manner aids or protects highway robbers/brigands by giving them information about the movement of the police?

- a) He is criminally liable as principal by indispensable cooperation in the commission of highway robbery or brigandage.
- b) He is criminally liable as an accessory of the principal offenders.
- c) He is criminally liable as an accomplice of the principal offenders.
- d) He is criminally liable as principal for aiding and abetting a band of brigands.

56. With intent to kill, GGG burned the house where F and D were staying. F and D died as a consequence. What is the proper charge against GGG?

- a) GGG should be charged with two (2) counts of murder.
- b) GGG should be charged with arson.

- c) GGG should be charged with complex crime of arson with double murder.
- d) GGG should be charged with complex crime of double murder.

57. RR convinced WW to take a job in Taiwan, assuring her of a good salary and entitlement to a yearly vacation. WW paid to RR the processing fee for passport and visa, but no receipt was issued for the payment. WW was made to use the alien certificate of registration of another person with a Chinese name and instructed on how to use the Chinese name. The application of WW was rejected by the Taiwanese authorities. Cases were filed against RR for illegal recruitment and estafa. The case of illegal recruitment was dismissed. Is RR liable for estafa?

- a) RR is liable for estafa with unfaithfulness or abuse of confidence.
- b) RR is liable for estafa by means of false pretenses.
- c) RR is not liable for estafa because WW participated in the illegal travel documents.
- d) RR can no longer be held liable for estafa because with the dismissal of the case against him for illegal recruitment, double jeopardy has already set in.

58. A entered the house of B. Once inside the house of B, A took and seized personal property by compulsion from B with the use of violence and force upon things, believing himself to be the owner of the personal property so seized. What is the criminal liability of A?

- a) A is criminally liable for robbery with violence because he employed violence in the taking of the personal property from B, robbery characterized by violence being graver than ordinary robbery committed with force upon things.
- b) A is criminally liable for robbery with force upon things in an inhabited house because the act was committed in a house constituting the dwelling of one or more persons.
- c) A is criminally liable for grave coercion because the presumption of intent to gain is rebutted.
- d) A is criminally liable for qualified trespass to dwelling because he employed violence.

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

- a) The physician is criminally liable for falsification of medical certificate.
- b) The physician is criminally liable if the false medical certificate is used in court.
- c) The physician incurs no criminal liability if the false medical certificate is not submitted to the court.

d) The physician incurs no criminal liability if the false medical certificate does not cause prejudice or damage.

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

a) Probation is not applicable when the accused is sentenced to serve a maximum of six (6) years.

b) Probation is not applicable when the accused has been convicted by final judgment of an offense punished by imprisonment of less than one (1) month and/or fine of less than P200.00.

c) Probation is not applicable when accused is convicted of indirect assault.

d) Probation is not applicable when accused is convicted of indirect bribery.

\*\* **No correct answer.** In 2012 when this exam was given, the correct answer is “c” because Indirect Assault is a Crime against Public Order. Under Section 9 of the Probation Law, PD 968 as amended, probation shall not extend to those offenders convicted of any crime against the national security and the public order.

However, The Probation Law has been recently amended by RA 10707, which was approved last Nov. 26, 2015. Under RA 10707, those “offenders convicted of any crime against the public order” have been excluded from the list of disqualified offenders to avail of probation.

61. What crime is committed by a person who, having found a ring, fails to deliver the same to the owner or to the local authorities?

a) The finder commits theft.

b) The finder commits concealment.

c) The finder commits qualified theft.

d) The finder commits usurpation of property.

62. At a wake, there were people watching a game of dice. With treachery and use of unlicensed firearms, AA fired successively several gunshots at their direction. During the shooting, four (4) persons were killed and fourteen (14) others were injured and brought to the hospital for the treatment of gunshot wounds. What should be the proper charge against AA?

a) AA should be charged with multiple murder and attempted murder.

b) AA should be charged with four (4) counts of murder and fourteen (14) counts of attempted murder.

c) AA should be charged with four (4) counts of murder, fourteen (14) counts of serious physical injuries and illegal possession of firearms.

d) AA should be charged with complex crime of murder and attempted murder with illegal possession of firearms.

63. A, B, C and D are members of the police department of a municipality. Conspiring with one another, they arrested E, without reasonable ground, for the purpose of delivering him to the proper authorities by imputing to E the crime of bribery. While E was being investigated by A, B, C and D, one of them placed a marked five hundred peso bill, together with the money taken from E, to make it appear that E, an employee of the Office of the Local Civil Registrar, agreed to perform an act not constituting a crime in connection with the performance of E's duties, which was to expedite the issuance of a birth certificate. What is the crime committed by A, B, C and D?

- a) A, B, C and D committed incriminatory machination through unlawful arrest.
- b) A, B, C and D committed intriguing against honor with unlawful arrest.
- c) A, B, C and D committed slight illegal detention.
- d) A, B, C and D committed corruption of public official.

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

- a) Imprudence;
- b) Malice;
- c) Negligence;
- d) Lack of foresight.

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

- a) When a person mortgages a real property by pretending to be the owner thereof.
- b) When a person disposes of the real property knowing it to be encumbered.
- c) When a person wrongfully takes real property from its lawful possessor to the prejudice of the latter.
- d) When a person mortgages real property while being a surety given in a civil action without express authority from the court.

66. DO, intending to kill EE, peppered the latter's bedroom with bullets, but since the intended victim was not home at that time, no harm came to him. What crime is committed?

- a) DO committed the crime of attempted murder.
- b) DO committed the crime of attempted homicide.
- c) DO committed the crime of impossible crime. (\* *Intod vs. CA, GR 103119, October 21, 1992*)
- d) DD committed the crime of malicious mischief.

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

- a) The offender commits maltreatment.
- b) The offender commits slander by deed.
- c) The offender commits assault.
- d) The offender commits coercion.

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

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

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

- a) No. The evil intent of the offender cannot be accomplished.
- b) No. An attempt to commit light felony constitutes an employment of inadequate or ineffectual means.
- c) No. The penalty for consummated light felony is less than the penalty for impossible crime.
- d) No. In impossible crime, the act performed should not constitute a violation of another offense.

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

- a) The public officer commits malversation.
- b) The public officer commits technical malversation.
- c) The public officer commits the crime of failure of accountable or responsible officer to render accounts.
- d) The public officer commits the crime of failure to make delivery of public funds or property.

71. AA knowingly and wilfully induced BB to swear falsely. BB testified as told in a formal hearing of an administrative case under circumstances rendering him guilty of perjury. Is AA criminally liable?

a) AA is not criminally liable because his act constitutes subornation of perjury which is not expressly penalized in the Revised Penal Code.

b) AA is not criminally liable because he was not the one who gave false testimony in the administrative case.

c) AA is not criminally liable because the witness suborned testified in an administrative case only.

d) AA is criminally liable for perjury as principal by inducement with BB as the principal by direct participation.

72. What should be the proper charge against an offender who unlawfully took and carried away a motor vehicle belonging to another without the latter's consent, killing the driver in the process?

a) The proper charge against the offender should be murder with the use of motor vehicle.

b) The proper charge against the offender should be qualified carnapping or carnapping in an aggravated form.

c) The proper charge against the offender should be carnapping and homicide.

d) The proper charge against the offender should be robbery with homicide.

73. Conspiracy to commit felony is punishable only in cases in which the law specifically provides a penalty therefor. Under which of the following instances are the conspirators not liable?

a) Conspiracy to commit arson.

b) Conspiracy to commit terrorism.

c) Conspiracy to commit child pornography.

d) Conspiracy to commit trafficking in persons.

74. With intent to cause damage, AAA deliberately set fire upon the two storey residential house of his employer, mostly made of wooden materials. The blaze spread and gutted down seven neighboring houses. On the occasion of the fire, six (6) persons sustained burn injuries which were the direct cause of their death. What crime was committed by AAA?

a) AAA committed the complex crime of arson with multiple homicide.

b) AAA committed arson and multiple homicide.

c) AAA committed simple arson.

d) AAA committed arson and multiple murder.

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

- a) The utility worker commits infidelity in the custody of papers.
- b) The utility worker commits malicious mischief.
- c) The utility worker commits estafa by removing, concealing or destroying office files.
- d) The utility worker commits crime involving destruction.

**ESSAY QUESTIONS:**

I

- a) What are the elements of the crime of bigamy? (5%)

**ANSWER:**

The elements of bigamy are:

1. That the offender has been legally married;
2. That said first marriage has not been legally dissolved, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead;
3. That he contracts a subsequent or second marriage; and
4. That the subsequent or second marriage would have been valid had it not been for the existence of the first marriage.

- b) If you were the judge in a bigamy case where the defense was able to prove that the first marriage was null and void or a nullity, would you render a judgment of conviction or acquittal? Explain your answer. (2%)

**ANSWER:**

If I were the judge, I would render a judgment of conviction. Proof that the first marriage is null and void or a nullity is not a defense in bigamy.

Article 349, RPC is clear: Any person who contracts a second marriage without first having a judicial declaration of the nullity of his or her first marriage, albeit on its face void and inexistent, is guilty of bigamy.

Parties to the marriage are not permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts. Only when the nullity of the marriage is so declared by the court can it be held as void. As long as the previous marriage was not lawfully dissolved or judicially declared void, contracting a new marriage constitutes bigamy. (*Lasanas vs. People, GR#159031, June 23, 2014*)

- c) Assuming the existence of the first marriage when accused contracted the second marriage and the subsequent judicial declaration of nullity of the second marriage on the ground of psychological incapacity, would you render a judgment of conviction or acquittal? Explain your answer. (3%)

ANSWER:

If I were the Judge, I would still render a judgment of conviction. A subsequent judicial declaration of nullity of the second marriage on the ground of psychological incapacity is absolutely of no moment in so far as the State's penal laws are concerned. Since a marriage contracted during the subsistence of a valid marriage is automatically void for being bigamous, the nullity of the second marriage is not per se an argument for the avoidance of criminal liability for bigamy. (*Tenebro vs. CA, GR 150758, February 18, 2004*)

It is a settled rule that criminal culpability attaches to the offender upon the commission of the offense. Hence, the crime of bigamy is committed by a person from the time he contracts the second marriage while his first marriage exists. The finality of the judicial declaration of nullity of his second marriage does not impede the filing of a criminal charge for bigamy against him. (*James Walter Capili vs. People, GR 183805, July 3, 2013*)

II

a) What is a privileged mitigating circumstance? (5%)

ANSWER:

A privileged mitigating circumstance is that which if present or attendant in the commission of a felony shall affect the imposition of penalty as to degree.

b) Distinguish a privileged mitigating circumstance from an ordinary mitigating circumstance as to reduction of penalty and offsetting against aggravating circumstance/s. (5%)

ANSWER:

The distinctions between ordinary and privileged mitigating circumstances are as follows:

1. As to offsetting: An ordinary mitigating circumstance can be offset by a generic aggravating circumstance WHEREAS a privileged mitigating circumstance cannot be offset by any aggravating circumstance.

2. As to reduction of penalty: An ordinary mitigating circumstance, if not offset by an aggravating circumstance, has the effect of lowering the imposable penalty to its minimum period WHEREAS a privileged mitigating circumstance has the effect of lowering the imposable penalty by one to two degrees.

III

a) Is the crime of theft susceptible of commission in the frustrated stage? Explain your answer in relation to what produces the crime of theft in its consummated stage and by way of illustration of the subjective and objective phases of the felony. (5%)

ANSWER:

NO, the crime of Theft has no frustrated stage.

In the case of *Valenzuela vs. People (GR 160188, June 21, 2007)*, the Supreme Court ruled that unlawful taking is the element that produces the felony of Theft in its consummated stage. Once unlawful taking is complete, theft is consummated. Unlawful taking is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft. Thus, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

b) What are the constitutional provisions limiting the power of Congress to enact penal laws? (5%)

ANSWER:

1. The penal law must be general in its application, otherwise, it would violate the equal protection clause.
2. The penal law must not be an ex post facto law.
3. The penal law must not be a bill of attainder or one which punishes without due process.
4. The penal law must not impose cruel, unusual, or degrading punishment.

IV

A postal van containing mail matters, including checks and treasury warrants, was hijacked along a national highway by ten (10) men, two (2) of whom were armed. They used force, violence and intimidation against three (3) postal employees who were occupants of the van, resulting in the unlawful taking and asportation of the entire van and its contents.

a) If you were the public prosecutor, would you charge the ten (10) men who hijacked the postal van with violation of Presidential Decree No. 532, otherwise known as the Anti--Piracy and Anti-Highway Robbery Law of 1974? Explain your answer. (5%)

ANSWER:

No. If I were the public prosecutor, I would charge the ten men of violation of RA 6539, The Anti-Carnapping Act. All the elements of carnapping are present. (1) there was actual taking of a motor vehicle, the postal van; (2) the postal van belonged to another; (3) the taking was done with intent to gain; and (4) the taking was done without the consent of the owner and with force, violence and intimidation against the 3 van employees who were occupants thereof.

It is not highway robbery under PD 532 because there was no showing that the 10 men were a band of robbers organized for the

purpose of committing robbery indiscriminately. What was shown is one isolated hijacking of a postal van, hence, carnapping.

b) If you were the defense counsel, what are the elements of the crime of highway robbery that the prosecution should prove to sustain a conviction? (5%)

ANSWER:

The elements of highway robbery under PD 532 are:

1. That there is unlawful taking of property of another;
2. That said taking is with intent to gain;
3. That said taking is done with violence against or intimidation of persons or force upon things or other unlawful means; and
4. That it was committed on any Philippine highway.

To sustain a conviction for highway robbery, the prosecution must prove that the accused were organized for the purpose of committing robbery indiscriminately. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed men. (*People vs. Mendoza, GR 104461, February 23, 1996; Filoteo, Jr. vs. Sandiganbayan, GR 79543, October 16, 1996*)

V

a) Who is an accomplice? (5%)

ANSWER:

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

b) Distinguish an accomplice from a conspirator as to their knowledge of the criminal design of the principal, their participation, the penalty to be imposed in relation to the penalty for the principal, and the requisites/elements to be established by the prosecution in order to hold them criminally responsible for their respective roles in the commission of the crime. (5%)

ANSWER:

The distinctions between a conspirator and an accomplice are as follows:

1. As to knowledge of the principal's criminal design: A conspirator knows the criminal design because he was part of the planning and decision to commit the crime; WHEREAS an accomplice knows the criminal design because he was informed by the principal and he concurred with it.

2. As to their participation: A conspirator authors the commission of the crime; WHEREAS an accomplice is a mere instrument who performs acts which are not indispensable, previous or simultaneous, to the commission of the crime.

3. As to the penalty to be imposed: The penalty to be imposed on a conspirator is the of the same degree as that of the principal WHEREAS the penalty to be imposed on an accomplice is one degree lower than that of the principal.

4. As to the elements to be established by the prosecution: To convict one as a conspirator, the elements are: (a) that two or more persons come to an agreement; (b) that the agreement concerns the commission of felony; and (c) that these persons decide to commit the felony; WHEREAS the elements to be proved to convict one as an accomplice are: (a) that there is a community of design between the principal and the accomplice; (b) that the accomplice performs acts previous or simultaneous to the commission of the crime; and (c) that the acts performed by an accomplice is related to those of the principal.

## VI

a) What is the fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law? (5%)

### ANSWER:

The fundamental principle in applying criminal laws is the Doctrine of *Pro Reo* which provides that penal laws shall always be construed liberally in favor of the accused. *In dubio pro reo*, i.e., when in doubt, rule for the accused. This is in consonance with the constitutional guarantee that an accused is presumed innocent until proven guilty beyond reasonable doubt.

b) How is the Indeterminate Sentence Law applied in imposing a sentence? (5%)

### ANSWER:

Under the Indeterminate Sentence Law, there are two formulae for determining the indeterminate penalty to be imposed on the convict – that for felonies under the RPC and that for crimes defined by special penal laws.

If the crime is penalized by the RPC, the maximum term of the sentence shall be that penalty provided for by law after appreciating all the attending circumstances surrounding the commission of the crime, while the minimum term of the sentence shall be one degree lower than the maximum, the range of the minimum left to the sound discretion of the court.

If the crime is penalized by special laws, the minimum of the indeterminate penalty should not be less than the minimum of the penalty prescribed by the law and the maximum of the indeterminate penalty should not be beyond or should not exceed that of the maximum of the penalty prescribed by the special law. (*Section 1, Indeterminate Sentence Law*)

## VII

a) Who are brigands? (5%)

ANSWER:

When more than 3 armed persons form a band of robbers for any of the following purposes: (1) to commit robbery in the highway; (2) to kidnap persons for the purpose of extortion or to obtain ransom; or (3) to attain by means of force and violence any other purposes, they shall be deemed highway robbers or brigands. (*Article 306, RPC*)

b) Distinguish brigandage from robbery in band as to elements, purpose of the offender, and agreement among the offenders. (5%)

ANSWER:

The following are the distinctions between brigandage and robbery in band:

1. As to elements: The elements of brigandage are: (a) that there be at least 4 armed persons; (b) that they form a band of robbers; and (c) that their purpose is either to commit robbery in the highway, or to kidnap persons for the purpose of extortion or to obtain ransom, or to attain by means of force and violence any other purposes, WHEREAS the elements of robbery in band are: (a) that there be at least 4 armed persons: and (b) that they took part in the commission of a robbery.

2. As to purpose of the offenders: In brigandage, the purpose of the brigands is either to commit robbery in the highway, or to kidnap persons for the purpose of extortion or to obtain ransom, or to attain by means of force and violence any other purposes, WHEREAS in robbery in band, the purpose of the robbers is to commit robbery, not necessarily in the highway.

3. As to agreement among the offenders: In brigandage, the agreement among the brigands is to commit robbery in the highway, WHEREAS in robbery in band, the agreement among the robbers is to commit only a particular robbery.

## VIII

a) Who is a habitual delinquent? (5%)

ANSWER:

The offender is a habitual delinquent if within a period 10 years from the date of his last conviction or last release from jail of any of the crimes of serious physical injuries, less serious physical injuries, robbery, theft, estafa, or falsification, he shall be found guilty of any of these crimes a third time or oftener. (*Article 64, RPC*)

b) Distinguish habitual delinquency from recidivism as to the crimes committed, the period of time the crimes are committed, the number of crimes committed, and their effects in relation to the penalty to be imposed on a convict. (5%)

ANSWER:

The following are the distinctions between recidivism and habitual delinquency:

1. As to the crimes committed: In recidivism, the crimes are only required to be embraced in the same title of the Revised Penal Code WHEREAS in habitual delinquency, the crimes are specified as serious physical injuries, less serious physical injuries, robbery, theft, estafa, and falsification.
2. As to the period of time the crimes are committed: In recidivism, there is no required period of time between the first crime which must be a conviction by final judgment and the second crime WHEREAS in habitual delinquency, each crime must be committed within a period 10 years from the date of his last conviction or last release from jail.
3. As to the number of crimes committed: In recidivism, there must be at least 2 crimes committed WHEREAS in habitual delinquency, there must be at least 3 crimes committed.
4. As to the effect on the imposable penalty: Recidivism is a generic aggravating circumstance which will increase the imposable penalty to its maximum period if not offset by an ordinary mitigating circumstance WHEREAS habitual delinquency is a special or extraordinary aggravating circumstance which will bring about the imposition of an additional penalty for the third or subsequent crime. It cannot be offset by any mitigating circumstance.

IX

- a) Define conspiracy. (5%)

ANSWER:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit. (*Article 8, RPC*)

- b) Distinguish by way of illustration conspiracy as a felony from conspiracy as a manner of incurring liability in relation to the crimes of rebellion and murder. (5%)

ANSWER:

Illustration of conspiracy as a felony – A, B, C, D, and E conspired to overthrow the government. For merely conspiring, they are already liable of Conspiracy to Commit Rebellion penalized under Article 136, RPC. Here, conspiracy is a crime by itself because the law penalizes the mere act of conspiring, without need for the offenders to actually commit rebellion, the crime agreed upon.

Illustration of conspiracy as a manner of incurring liability – A, B, and C conspired to kill X. They agreed to wait in ambush for X in a dark portion of the street where he usually passes by. For merely conspiring, they are not yet liable. Here, conspiracy is only a means of committing a crime because the law does not penalize conspiracy

to commit murder. For A, B, and C to become liable, they must actually commit the crime agreed upon, murder.

X

a) Explain and illustrate the stages of execution of the crime of homicide, taking into account the nature of the offense, the essential element of each of the stages of execution and the manner of committing such intentional felony as distinguished from felony committed through reckless imprudence. (5%)

ANSWER:

Illustration of an intentional felony, homicide and its 3 stages: attempted, frustrated and consummated.

X, with intent to kill, shot Y.

If Y sustained a non fatal wound near the shoulder, X is liable of Attempted Homicide. X's act of shooting Y is an overt act directly connected to homicide, however, he was not able to perform all the acts of execution to bring about homicide by reason some cause or accident other than his spontaneous desistance, i.e., the wound inflicted is non fatal.

If Y sustained a fatal wound on the chest that could have caused his death were it not for the immediate medical operation performed on him, the crime committed is Frustrated Homicide. It is frustrated because when X inflicted a fatal gunshot wound on Y, X has already performed all the acts of execution to bring about homicide, however, homicide is not produce by reason of a cause independent of the will of the perpetrator, i.e., an immediate medical operation done on the victim.

If Y died, X is liable of homicide because X has already performed the acts/elements necessary for the accomplishment of homicide.

Illustration of a felony committed though reckless imprudence.

X was driving his car recklessly when he hit a pedestrian.

If the pedestrian died, X is liable of Reckless Imprudence resulting in Homicide. Since the victim died, even if there was no intent to kill, the felony resulting from the imprudence is homicide because intent to kill becomes a general criminal intent which is presumed by law.

If the pedestrian did not die, X is liable of Reckless Imprudence resulting in Physical Injuries. Since there was no intent to kill on the part of X, the felony resulting from the imprudence would only be physical injuries. There is no such crime as Reckless Imprudence resulting in Frustrated or Attempted Homicide because there was no intent to kill on the part of the accused.

b) AA was arrested for committing a bailable offense and detained in solitary confinement. He was able to post bail after two (2) weeks of detention. During the period of detention, he was not given any food.

Such deprivation caused him physical discomfort. What crime, if any, was committed in connection with the solitary confinement and food deprivation of AA? Explain your answer. (5%)

ANSWER:

The crime committed is Violation of RA 9745, The Anti-Torture Act. Food deprivation and confinement in solitary cell are considered as physical and psychological torture under Section 4(2) of RA 9745.

\* \* \* \* \*

## **BAR 2013 – CRIMINAL LAW ANSWERS**

### **ESSAY QUESTIONS:**

I.

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

Assuming a judgment of conviction and after considering the attendant circumstances, what penalty should the judge impose? (7%)

### **ANSWER:**

The Judge should impose an indeterminate penalty of *arresto mayor* in any of its period as the minimum term of the sentence to *prision correccional* in its medium period as the maximum term of the sentence. Bruno was entitled to 2 privileged mitigating circumstances of incomplete self-defense and the presence of 2 ordinary mitigating circumstances without any aggravating circumstance which under Articles 69 and 64(5), RPC, respectively, would lower the prescribed penalty for homicide – *reclusion temporal* – to *prision correccional*.

There is incomplete self-defense because Bruno proved the presence of unlawful aggression, as it was the victim who first attacked him, and did so without provocation on Bruno's part. There is, however, no reasonable necessity of the means employed to prevent/repel the unlawful aggression because Bruno used a knife to stab the weaponless aggressor. In addition, Bruno proved the presence of 2 other mitigating circumstances, namely: voluntary surrender and voluntary plea of guilt.

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

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty should be within the range of *prision correccional* in its medium period and the minimum term should be within the range of the penalty next lower in degree or *arresto mayor* in any of its period.

## II.

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

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

What crime/s did Felipe, Julio, Roldan, and Lucio commit and what was their degree of participation? (7%)

### ANSWER:

Felipe, Julio, Roldan and Lucio are all liable for the special complex crime of Kidnapping and Serious Illegal Detention with Rape. It was sufficiently proved that the 4 accused kidnapped Mildred and held her in detention for 5 days and carnally abused her. Since it is a special complex crime, no matter how many times the victim had been raped, the resultant crime is only one kidnapping and serious illegal detention with rape. The composite acts are regarded as a single indivisible offense with only one penalty. It is illegal detention and not forcible abduction since it was evident that the intent was to detain the victim.

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

## III.

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

secured a confession from, Modesto who admitted that their loot had been deposited with Abelardo.

What is Abelardo's liability? (7%)

ANSWER:

Abelardo is not criminally liable.

He is not liable as an accessory because he has no knowledge of the commission of the crime of robbery. Mere presumption will not suffice. Moreover, granting for the sake of argument that his act would amount to that of an accessory – concealing the body of the crime or the effects or instruments thereof to prevent its discovery (*Article 19, par.2, RPC*) – he is exempted from criminal liability, being the brother of Modesto. (*Article 20, RPC*)

He is also not liable as a fence under PD 1612, the Anti Fencing Law. The elements of fencing are: (1) that a crime of robbery or theft has been committed; (2) that the accused, who was not a principal or accomplice in the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells, disposes, or buys and sells, or in any other manner deals with any article, item or object that is the proceeds of robbery or theft; (3) that the accused knows or should have known that the thing in his possession is the proceeds of robbery or theft; and (4) that there is, on the part of the accused, intent to gain, for himself or for another. Although the first 3 elements are present, the last element of intent to gain is absent. Abelardo kept quiet about the 2 bags of money in the vault because he was unsure of what to do under the circumstances.

IV.

In her weekly gossip column in a tabloid, Gigi wrote an unflattering article about Pablo, a famous singer, and his bitter separation from his wife. The article portrayed Pablo as an abusive husband and caused him to lose lucrative endorsement contracts. Pablo charged Gigi with libel. In her defense, Gigi countered that she did not commit libel because Pablo has attained the status of a public figure so that even his personal life has become a legitimate subject of public interest and comment.

Is Gigi correct? (7%)

ANSWER:

No. Gigi is not correct.

Gigi was attacking the personal life of Pablo as a husband and not his public life as a famous singer. She portrayed Pablo as an abusive husband that caused him to lose lucrative endorsement contracts. Such defamatory utterances are not protected. Any attack upon the private character of a public figure on matters which are not related to their works would constitute libel. (*Sazon vs. CA, GR 120715, March 29, 1996; Fermin vs. People, GR 157643, March 28, 2008*)

V.

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

Can Michael avail of the suspension of his sentence provided under this law? (7%)

ANSWER:

The benefits of a suspended sentence can no longer apply to Michael. Under Section 40, RA 9344 as amended, the suspension of sentence lasts only until the offender reaches the maximum age of 21 years. Since Michael was already 21 years old, he can no longer be given a suspended sentence. However, in lieu of confinement in a regular penal institution, Michael may serve his sentence in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD. (*Section 51, RA 9344 as amended; People vs. Jacinto, GR 182239, March 16, 2011; People vs. Salcedo, GR 186523, June 22, 2011; Padua vs. People, GR 168546; July 23, 2008; People vs. Sarcia, GR 169641, September 10, 2009*)

VI.

Roberto bought a Toyota Fortuner from Inigo for P500,000. While driving his newly-bought car, Roberto met a minor accident that made the examination of his vehicle's Registration Certificate necessary. When the policeman checked the plate, chassis and motor numbers of the vehicle against those reflected in the Registration Certificate, he found the chassis and motor numbers to be different from what the Registration Certificate stated. The Deed of Sale covering the sale of the Fortuner, signed by Inigo, also bore the same chassis and motor numbers as Roberto's Registration Certificate. The chassis and motor numbers on the Fortuner were found, upon verification with the Land Transportation Office, to correspond to a vehicle previously reported as carnapped.

Roberto claimed that he was in good faith; Inigo sold him a carnapped vehicle and he did not know that he was buying a carnapped vehicle.

If you were the prosecutor, would you or would you not charge Roberto with a crime? (7%)

ANSWER:

If I were the public prosecutor, I would charge Roberto of violation of PD 1612, The Anti-Fencing Law. The elements of fencing are: (1) that a crime of robbery or theft has been committed; (2) that the accused, who was not a principal or accomplice in the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells, disposes, or buys and sells, or in any other manner deals with any article, item or object that is the proceeds of robbery or theft; (3) that the accused knows or should have known that the thing in his possession is the proceeds of robbery or theft; and (4) that there is, on the part of the accused, intent to gain, for himself or for another.

All the elements are present. Someone carnapped the Toyota Fortuner, and sold it to Roberto who did not take part in the commission of the crime. Roberto should have known that the car was stolen because it was not properly documented as the deed of sale and registration certificate did not reflect the correct numbers of the vehicle's engine and chassis. Apparently, he made no effort to check the papers covering his purchase.

Roberto's claim of good faith has no merit because PD 1612 is a malum prohibitum, therefore, good faith is not a defense. (*Dimat vs. People, GR 181144, January 25, 2012*)

## VII.

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

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

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

### ANSWER:

Mariano is liable of 2 counts of Direct Assault.

The elements of Direct Assault are: (a) that the accused makes an attack, employs force, makes a serious intimidation or a serious resistance; (b) that the person assaulted is a person in authority or his agent; (c) that at the time of the assault the person in authority or his agent is engaged in the performance of his official duties or that the assault was on the occasion of the performance of his official duties; (d) that the accused knows that the person he is assaulting is a person in authority or his agent in the exercise of his duties; and (e) that there is no public uprising.

The first Direct Assault is qualified by laying of hands on a person in authority. Mariano slapped Ms. Reyes, a person in authority under Article 152, RPC, while she was in the performance of her official duties.

The second Direct Assault was committed when Mariano repeatedly punched Dencio who became an agent of a person in authority when he came to the aid of Ms. Reyes, a person in authority who was a victim of direct assault.

#### VIII.

William is the son-in-law of Mercedes who owns several pieces of real property. In 1994, William's wife, Anita, died. In 1996, William caused the preparation of a Special Power of Attorney (SPA) giving him the authority to sell two (2) parcels of land registered in the name of Mercedes. The signature of Mercedes in the SPA was forged and, through this forged SPA and without the consent and knowledge of Mercedes, William succeeded in selling the two (2) parcels for Php 2,000,000. He pocketed the proceeds of the sale.

Mercedes eventually discovered William's misdeeds and filed a criminal complaint. William was subsequently charged with *estafa* through falsification of public document.

Was the criminal charge proper? (7%)

#### ANSWER:

Yes, the criminal charge of *estafa* through falsification of public document is proper. William forged the signature of his mother in law in the Special Power of Attorney, a public document, as a necessary means to sell her properties without remitting the proceeds thereof, thereby committing *estafa*. Although the relationship of affinity created between William and his mother in law survived the death of his wife Anita, the absolatory cause under Article 332(1), RPC does not apply to him. Said absolatory cause is strictly limited to the simple cases of theft, *estafa*/swindling, and malicious mischief. It does not apply where any of these crimes is complexed with another crime. (*Intestate Estate of Manolita Gonzales vda. De Carungcong vs. People, GR 181409, February 11, 2010*)

#### IX.

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

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

Was the judge correct? (7%)

ANSWER:

The judge is not correct. The Three Fold Rule applies to service of sentence, not on the imposition of penalty. The computation under the three-fold rule is for the prison authorities to make. The court must impose all penalties for all the crimes the accused have been found guilty of. The court must impose a penalty for each rape. The proper penalty, therefore, is *reclusion perpetua* for each count of rape.

X.

Frank borrowed P1,000,000 from his brother Eric. To pay the loan, Frank issued a post-dated check to be presented for payment a month after the transaction. Two days before maturity, Frank called Eric telling him he had insufficient funds and requested that the deposit of the check be deferred. Nevertheless, Eric deposited the check and it was dishonored. When Frank failed to pay despite demand, Eric filed a complaint against him for violation of Batas Pambansa Big. 22 (*The Bouncing Checks Law*).

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

ANSWER:

Yes, the charge is correct. Violation of Batas Pambansa Big. 22, *The Bouncing Checks Law*, is *malum prohibitum* which is committed by mere issuance of a check without sufficient funds. Good faith is not a defense. As long as the check was issued on account or for value, the purpose for which the check was issued, the terms and conditions relating to the issuance are irrelevant to the prosecution of the offender. Hence, the request of Frank to defer the deposit of the check as it has insufficient funds will not militate against the prosecution for violation of BP 22.

XI.

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

For conjugal weekenders, he plans to rent out rooms with hotel-like amenities at rates equivalent to those charged by 4-star hotels; for long-term occupants, he is prepared to offer room and board with special meals in air conditioned single-occupancy rooms, at rates equivalent to those charged by 3-star hotels.

What advice will you give the Senator from the point of view of criminal law, taking into account the purpose of imprisonment (7%) and considerations of ethics and morality (3%)? (10%total points)

ANSWER:

I would advise Senator Salcedo not to file the said bill. First, the bill is unconstitutional as it violates the equal protection clause of the Constitution. It will create economic inequality in our criminal justice system. Rich prisoners will enjoy better amenities and privileges than those who are poor. Second, the bill will defeat the purpose of penalties in criminal law, which is to secure justice, retribution, and reformation.

**MULTIPLE CHOICE QUESTIONS:**

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

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

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

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

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

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

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

- (A) A minor above 15 years old and below 18 years old who acted with discernment.

(B) One who, in fulfillment of his duty to carry out the warrant of arrest of a fugitive, shot the fugitive to death without ascertaining his identity.

(C) One who defended himself against an unlawful aggression but used unreasonable means and gave provocation.

(D) All of the above.

V. Conspiracy to commit a felony is punishable only in cases where the law specifically provides a penalty.

Which of the following combinations contain specific felonies under the Revised Penal Code? (0.5%)

(A) Conspiracy to commit treason, conspiracy to commit rebellion, conspiracy to commit *coup d'etat*, conspiracy to commit *misprision* of treason.

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

(C) Conspiracy to commit rebellion or insurrection, conspiracy to commit sedition, conspiracy to commit illegal assemblies, conspiracy to commit treason.

(D) Conspiracy to commit treason, conspiracy to commit sedition, conspiracy to commit terrorism.

(E) None of the above.

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

(A) With the use of force or intimidation.

(B) When the rape is committed by two or more persons.

(C) When the offender uses an instrument and inserts it into the mouth of the victim.

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

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

(A) when the death of the accused occurred before conviction

(B) when the death of the accused occurred after conviction and after he has perfected his appeal from conviction

(C) when the death of the accused occurred during the pendency of his appeal

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

(E) None of the above.

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

- (A) grave coercion
- (B) a violation of the *Anti-Hijacking Law* or R.A. No. 6235
- (C) grave threats
- (D) a violation of the *Human Security Act of 2007* or the *Anti-Terrorism Law*
- (E) All of the above.

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

- (A) If the evidence is merely circumstantial, proof of motive is essential.
- (B) Generally, proof of motive is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing.
- (C) Motive is important to ascertain the truth between two antagonistic theories.
- (D) Motive is relevant if the identity of the accused is uncertain.
- (E) All of the above are correct.

X. Luis was sentenced to *prision mayor* and to pay a fine of P50,000.00, with subsidiary imprisonment in case of insolvency. Is the sentence correct? (0.5%)

- (A) Yes, because Luis has no property to pay for the fine, so he must suffer the equivalent imprisonment provided by law in lieu of fine.
- (B) No, because subsidiary imprisonment is applicable only when the penalty imposed is *prision correccional* or below.
- (C) Yes, because the sentence says so.
- (D) No, because the subsidiary imprisonment is applicable only when the penalty imposed is limited to a fine.
- (E) None of the above.

XI. Anthony drew a promissory note and asked his terminally-ill and dying business partner Ben to sign it. The promissory note bound Ben to pay Anthony One Million Pesos (P1,000,000) plus 12% interest, on or before June 30, 2011.

If Ben died before the promissory note's due date and Anthony still collected P1,000,000 with interest from Ben's estate, what crime/s did Anthony commit? (1%)

- (A) Falsification of a public document.
- (B) Falsification of a private document and estafa.
- (C) Estafa.
- (D) Estafa thru falsification of a private document.
- (E) None of the above.

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

What crime did Ritchie commit? (1%)

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

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

Was Santos correct? (1%)

(A) Yes, because he served his sentences simultaneously so that his 20 years of incarceration was sufficient.

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

(C) No, only penalties other than imprisonment can be served simultaneously.

(D) Yes, because after he has served the minimum of his penalties, he can now be released.

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

What crime did Amelia commit? (1%)

(A) Alarms and scandals because her act of swimming naked disturbs the public tranquility.

(B) Grave scandal because she committed highly scandalous acts that are offensive to decency or good customs.

(C) Immoral doctrines, obscene publications and exhibitions, and indecent shows under Article 201 of the Revised Penal Code, because her act of swimming naked is akin to an indecent live show.

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

XV. After drinking a bottle of Jack Daniels, Jonjon drove his BMW sports car at high speed, rammed into a group of crossing pedestrians, and hit a traffic light post. The incident caused the death of one (1) pedestrian, serious injuries to three (3) others, and the destruction of the traffic light post.

If you were the prosecutor, what would you charge Jonjon?  
(1%)

(A) Homicide with serious physical injuries through simple negligence.

(B) Damage to property, serious physical injuries and homicide through reckless negligence.

(C) Simple negligence resulting in damage to property, serious physical injuries and homicide.

(D) Reckless imprudence resulting in homicide, serious physical injuries and damage to property.

XVI. On June 1, 2011, Efren bought a used top-of-the-line Mercedes Benz for P7.5 Million from Switik Trading. On the same day, he paid P2,500,000 in cash and issued Switik Trading a check for P5,000,000 dated July 31, 2011. He then brought the car to a friend's house and hid it in an underground garage. The check Efren issued was dishonored for insufficiency of funds when presented for payment on due date. Efren was asked to honor and pay the check or to return the car, but he refused.

What crime/s did Efren commit? (1%)

(A) Carnapping.

(B) Estafa and carnapping.

(C) A violation of BP Blg. 22.

(D) Estafa and a violation of BP Blg. 22.

(E) None of the above.

XVII. In his Answer to a complaint, Atty. Jose (counsel for the defendant) stated that Atty. Agrada (counsel for the plaintiff) is "bobo, inutile, good for nothing, stupid, and a menace to clients."

Can Atty. Jose be held criminally liable for libel? (1%)

(A) No, because an Answer to a complaint is a court pleading where communications made are privileged; the writer cannot be held liable for libel.

(B) Yes, because the statement casts aspersion on the character, integrity and reputation of Atty. Agrada as a lawyer and exposed him to public ridicule.

(C) Yes, although a court pleading is a privileged communication, malicious statements that are irrelevant and impertinent to the issue in the pleading may be libelous.

(D) Yes, there was a malicious intent to ridicule Atty. Agrada as a lawyer.

(E) No, because the statement is in a pleading, but Atty. Jose can be charged administratively for misconduct before the Supreme Court.

XVIII. Using his charms because of his movie star looks, Phil, in a movie date with Lyn, a 19-year old *colegiala*, kissed her on the cheek and stroked her pubic hair. Lyn shouted for help and Phil was arrested.

Phil is liable for \_\_\_\_\_ . (1%)

- (A) rape by sexual assault for using his fingers
- (B) violation of the Anti-Child Abuse Law for lascivious conduct
- (C) unjust vexation
- (D) acts of lasciviousness
- (E) None of the above

XIX. If Rod killed Irene, his illegitimate daughter, after taking her diamond earrings and forcing her to have sex with him, what crime/s should Rod be charged with? (1%)

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

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

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

- (A) Yes, because the conversation was private in nature.
- (B) Yes, because the conversation was overheard without the consent of the parties, Julito and Atty. Hipolito.
- (C) No, because what is punishable is intentional listening to a conversation through a wire.
- (D) No, because a telephone extension line is not the device or arrangement contemplated by the law and the use of an extension line cannot be considered as wire tapping.
- (E) None of the above.

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

If you were counsel for Darjeeling Ventures, Inc., what criminal charge should you file against Judge Talim? (1%)

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

XXII. George, the 20-year old son of a rich politician, was arrested at the NAIA arrival lounge and found positive for opium, a dangerous drug. When arrested, 15 grams of cocaine were found in his backpack.

What offense would you charge George under R.A. No. 9160 (*Comprehensive Dangerous Drugs Act*)? (1%)

- (A) Use of dangerous drug.
- (B) Use and possession of dangerous drugs.
- (C) Possession of dangerous drugs.
- (D) Importation of dangerous drugs.
- (E) None of the above.

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

What crime did General Tejero and his men commit? (1%)

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

XXIV. Andres was convicted of frustrated homicide and was sentenced to 6 years and 1 day as minimum, to 8 years of *prision mayor* as maximum. Andres appealed his conviction to the Court of Appeals, which convicted him of attempted homicide, and sentenced him to 6 months of *arresto mayor* as minimum, to 4 years of *prision correccional* as maximum. Instead of appealing his conviction, Andres filed an application for probation with the Regional Trial Court.

Is Andres qualified to avail of the benefits of the probation law? (1%)

(A) No, because when he filed a notice of appeal with the Court of Appeals, he waived his right under the probation law.

(B) Yes, because after his appeal, he qualified for probation as the sentence imposed on him was less than 6 years. (*Colinares vs. People, GR 182748, December 13, 2011*)

(C) Yes, because the probation law is meant to favor the accused.

(D) No, because his previous sentence of more than 6 years disqualified him so that he can no longer avail of probation as an alternative remedy.

(E) None of the above.

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

Is Juancho qualified for probation? (1%)

(A) Yes, because the penalty for alarms and scandals is less than six (6) years.

(B) Yes, because Juancho did not appeal his conviction.

(C) No, because the crime of alarms and scandals carries with it a fine of P200.

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

(E) None of the above.

\*\* In 2013 when this exam was given, the correct answer was "D" because Alarms and Scandal is a Crime against Public Order. Under Section 9 of the Probation Law, PD 968 as amended, probation shall not extend to those offenders convicted of any crime against the national security and the public order.

However, The Probation Law has been recently amended by RA 10707, which was approved last Nov. 26, 2015. Under RA 10707, those "offenders convicted of any crime against the public order" have been excluded from the list of disqualified offenders to avail of probation.

**BAR 2014 – CRIMINAL LAW  
ANSWERS**

I.

*Ms. A* had been married to *Mr. B* for 10 years. Since their marriage, *Mr. B* had been jobless and a drunkard, preferring to stay with his “*barkadas*” until the wee hours of the morning. *Ms. A* was the breadwinner and attended to the needs of their three (3) growing children. Many times, when *Mr. B* was drunk, he would beat *Ms. A* and their three (3) children, and shout invectives against them. In fact, in one of the beating incidents, *Ms. A* suffered a deep stab wound on her tummy that required a prolonged stay in the hospital. Due to the beatings and verbal abuses committed against her, she consulted a psychologist several times, as she was slowly beginning to lose her mind. One night, when *Mr. B* arrived dead drunk, he suddenly stabbed *Ms. A* several times while shouting invectives against her.

Defending herself from the attack, *Ms. A* grappled for the possession of a knife and she succeeded. She then stabbed *Mr. B* several times which caused his instantaneous death. Medico-Legal Report showed that the husband suffered three (3) stab wounds.

Can *Ms. A* validly put up a defense? Explain. (5%)

ANSWER:

Yes, *Ms. A* can put up the defense of battered woman syndrome. She is suffering from physical and psychological or emotional distress resulting from cumulative abuse by her husband. She even consulted a psychologist several times, as she was slowly beginning to lose her mind. Under Section 26, RA 9262 of The Anti-Violence against Women and their Children Act, “victim survivors who are found by the court to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for the justifying circumstance of self-defense under the Revised penal Code.”

II.

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

What was the crime committed? (4%)

ANSWER:

Macho committed the crime of Homicide. Since death resulted from Macho's act of accidentally pulling the trigger of the gun, homicide is committed. Here, intent to kill is a general criminal intent which is presumed by law because the victim died.

III.

*City Engr. A*, is the city engineer and the Chairman of the Bids and Awards Committee (BAC) of the *City of Kawawa*. In 2009, the *City of Kawawa*, through an ordinance, allotted the amount of P100 million for the construction of a road leading to the *poblacion*. *City Engr. A* instead, diverted the construction of the road leading to his farm. Investigation further showed that he accepted money in the amount of P10 million each from three (3) contending bidders, who eventually lost in the bidding.

Audit report likewise showed that service vehicles valued at P2 million could not be accounted for although reports showed that these were lent to *City Engr. A's* authorized drivers but the same were never returned. Further, there were funds under *City Engr. A's* custody amounting to P10 million which were found to be missing and could not be accounted for. In another project, he was instrumental in awarding a contract for the construction of a city school building costing P10 million to a close relative, although the lowest bid was P8 million. Investigation also revealed that *City Engr. A* has a net worth of more than P50 million, which was way beyond his legitimate income. (8%)

(A) If you are the Ombudsman, what charge or charges will you file against *City Engr. A*?

(B) Suppose the discovered net worth of *City Engr. A* is less than P50 million, will your answer still be the same?

ANSWER:

(A) If I am the Ombudsman, I would file a case of Plunder under RA 7080 against City Engineer A. Engr. A is a public officer who amassed, accumulated or acquired ill-gotten wealth through a combination of overt or criminal acts of misuse, misappropriation, conversion, or malversation of public funds, receiving kickbacks from persons in connection with a government contract or project by reason of his office or position, and illegally or fraudulently conveying or disposing of assets belonging to the national government, in the aggregate amount or total value of at least P50 million.

(B) Yes, my answer will still be the same. *City Engr. A's* net worth being less than P50 million is not determinative of his liability. What is material is the fact that he acquired, amassed and accumulated ill-gotten wealth of more than P50 million. The basis of plunder is the combination of criminal acts or series of acts that

accumulated at least P50million. The predicate crimes are already absorbed in the crime of plunder.

#### IV.

*Madam X*, a bank teller, received from depositor *Madam Y* a check payable to cash in the amount of P1 million, to be deposited to the account of *Madam Y*. Because the check was not a crossed check, *Madam X* credited the amount to the account of her good friend, *Madam W*, by accomplishing a deposit slip. Seven (7) days after, *Madam X* contacted her good friend, *Madam W* and told her that the amount of P1 million was wrongfully credited to *Madam W*, thus, *Madam X* urged *Madam W* to withdraw the amount of P1 million from her account and to turn over the same to *Madam X*. As a dutiful friend, *Madam W* readily acceded. She was gifted by *Madam X* with an expensive Hermes bag after the withdrawal of the amount.

What crime/s, if any, did *Madam X* and *Madam W* commit? Explain. (5%)

#### ANSWER:

*Madam X* committed the crime of Qualified Theft under Article 310, RPC. When *Madam X*, a bank teller, received the check payable to cash in the amount of P1million for deposit to the account of *Madam Y*, what was transferred to her was merely the physical or material possession thereof. Hence, her subsequent misappropriation of the amount shall constitute theft, qualified by grave abuse of confidence. There is grave abuse of confidence because the relationship of guardianship, dependence, and vigilance between the depositor and the bank created a high degree of confidence between them which *Madam X*, as the bank teller representing the bank, abused.

#### V.

Congress passed a law reviving the Anti-Subversion Law, making it a criminal offense again for a person to join the Communist Party of the Philippines. *Reporma*, a former high-ranking member of the Communist Party, was charged under the new law for his membership in the Communist Party when he was a student in the 80's. He now challenges the charge against him.

What objections may he raise? (3%)

#### ANSWER:

*Reporma* may raise the argument that one of the limitations on the power of Congress to enact a penal is that it cannot pass an *ex post facto* law. An *ex post facto* law is a law which makes an act criminal although at the time it was committed, it was not yet so. Charging *Reporma* under this new law for his previous membership in the Communist Party would be unconstitutional. The retroactive application of the law cannot be prejudicial to the accused.

VI.

A was caught peeping through a small hole in the bathroom door while a young 16-year-old lady was taking a bath. A is liable for: (1%)

- (A) Violation of R.A. 9262 or Violence Against Women and their Children
- (B) Violation of R.A. 7610 – Child Abuse Law
- (C) Light coercion
- (D) Acts of lasciviousness

VII.

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

At the jail, *Loko* gave the guard P10,000.00 to open the gate and let *Takas* out.

What crime or crimes did *Filthy*, *Loko*, and the *guard* commit? (4%)

ANSWER:

*Filthy* is liable of:

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

*Loko* is liable of:

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

The guard is liable of:

- (1) Direct Bribery, Article 210, RPC, because he agreed to open the gate and let *Takas* out in consideration of P10,000.00.

(2) Infidelity in the Custody of Prisoners, Article 223, RPC, because he, as the custodian of Takas, connived or consented to his escape by opening the gate.

#### VIII.

*Pretty* was a campus beauty queen who, because of her looks and charms, attracted many suitors. Having decided that she would become a nun, *Pretty* turned down all her suitors. *Guapo*, one of her most persistent suitors, could not handle rejection and one night, decided to accost *Pretty* as she walked home. Together with *Pogi*, *Guapo* forced *Pretty* into his car and drove her to an abandoned warehouse where *he* and *Pogi* forced *Pretty* to dance for them. Later, the two took turns in raping her. After satisfying their lusts, *Guapo* and *Pogi* dropped her off at her house. (4%)

(A) What crime or crimes did *Guapo* and *Pogi* commit?

(B) *Pretty*, after the ordeal, decided to take her own life by hanging herself one hour after the rape. Would *Guapo* and *Pogi* be liable for *Pretty*'s death? Explain.

#### ANSWER:

(A) *Guapo* and *Pogi* committed the complex crime of Forcible Abduction with Rape. They abducted *Pretty* against her will and with lewd design, and thereafter rape the her. Forcible abduction was a necessary means to commit the crime of Rape. Since there is conspiracy, *Guapo* and *Pogi* are responsible not only for the rape each personally committed but also for the rape committed by his co-conspirator.

(B) *Guapo* and *Pogi* would not be held liable for the death of *Pretty*. Suicide is an efficient intervening cause that has broken the causal connection between the rapes and the death. In *People vs. Napudo* (GR 168448, October 8, 2008), the victim committed suicide due to rape. The accused was only charged with and convicted of rape.

#### IX.

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

if the policemen did not disperse. *A* and *B* demanded that they should be allowed to use a vehicle to bring them to a certain place and that would be the time that they would release the young boy. The policemen acceded. In the meantime, *C* was arrested by the policemen while he was about to flee, while *A* and *B*, after releasing the young boy, were arrested.

What crime/s did *A*, *B*, and *C* commit, and what modifying circumstances attended the commission of the crime/s? (6%)

ANSWER:

*A*, *B*, and *C* committed the crime of robbery with homicide under Article 294, RPC. The criminal design was to rob but in the course of said robbery, *B* accidentally pulled the trigger of his gun hitting and killing a neighbour of the victim. Even if said death is accidental, the crime is still robbery with homicide because the killing took place by reason or on occasion of the robbery. The term "homicide" is used in its generic sense, which includes accidental death.

*A*, *B*, and *C* are all liable as principals because they are conspirators. They all agreed to the commission of the crime.

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

X.

*Loko* advertised on the internet that he was looking for commercial models for a TV advertisement. *Ganda*, a 16-year-old beauty, applied for the project. *Loko* offered her a contract, which *Ganda* signed. She was asked to report to an address which turned out to be a high-end brothel. *Ganda* became one of its most featured attraction.

What is *Loko's* liability, if any? What effect would *Ganda's* minority have on *Loko's* liability? (4%)

ANSWER:

*Loko* is liable of the crime of Trafficking in Persons under RA 9208. He recruited, offered and hired *Ganda* by means of fraud or deception for the purpose of exploitation or prostitution. By means of deceit, i.e., in the guise of making her a commercial model, *Loko* recruited *Ganda* for the purpose of prostitution.

*Ganda's* minority is a qualifying circumstance. Under Section 6, RA 9208, when the trafficked person is a child, the crime committed is Qualified Trafficking in Persons, penalized by life imprisonment.

XI.

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

(1%)

(A) attempted homicide

- (B) grave threat
- (C) impossible crime
- (D) alarm and scandal

XII.

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

What crime did *Pogi* commit? (4%)

ANSWER:

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

All the elements of Kidnapping and Serious Illegal Detention are present. *Pogi*, a private individual, kidnapped and detained Sexy by bringing her to a deserted place. Said detention is illegal and is serious because it lasted for more than 3 days and the victim is a female.

The special complex crime of Kidnapping and Serious Illegal Detention with Rape resulted because Sexy, the victim of the kidnapping and detention, was raped as a consequence of the detention. (*Article 267, last par., RPC*) Since it is a special complex crime, regardless of the number of times the victim had been raped, there is only one single indivisible offense of Kidnapping and Serious Illegal Detention with Rape.

XIII.

*Puti* detested *Pula*, his roommate, because *Pula* was courting *Ganda*, whom *Puti* fancied. One day, *Puti* decided to teach *Pula* a lesson and went to a veterinarian (*Vet*) to ask for poison on the pretext that he was going to kill a sick pet, when actually *Puti* was intending to poison *Pula*. The *Vet* instantly gave *Puti* a non-toxic solution which, when mixed with *Pula's* food, did not kill *Pula*. (4%)

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

ANSWER:

(A) *Puti* committed the impossible crime of murder. All the elements of an impossible crime are present. *Puti's* act of mixing a solution with *Pula's* food would have been murder, a crime against persons. The act was done evil intent which is to kill *Pula*. However, the crime was not accomplished because of the employment of ineffectual means, i.e., the solution turned out to be non-toxic which would not kill *Pula*. And said act would not fall under any other provision of the RPC.

(B) No, my answer would not be the same. If as a result of the mixture, *Pula* got an upset stomach and had to be hospitalized for 10 days, the crime committed by *Puti* is Less Serious Physical Injuries. It is not an impossible crime because the last element of an impossible requires that the act performed should not constitute a violation of another provision of the RPC.

#### XIV.

*Malo*, a clerk of court of a trial court, promised the accused in a drug case pending before the court, that he would convince the judge to acquit him for a consideration of P5 million. The accused agreed and delivered the money, through his lawyer, to the clerk of court.

The judge, not knowing of the deal, proceeded to rule on the evidence and convicted the accused. (4%)

(A) *Malo* was charged with violation of Section 3(b), Republic Act (R.A.) No. 3019, which prohibits a public officer from directly or indirectly requesting or receiving any gift, present, share percentage or benefit wherein the public officer, in his official capacity, has to intervene under the law. He was later charged also with indirect bribery under the Revised Penal Code. *Malo* claims he can no longer be charged under the Revised Penal Code for the same act under R.A. 3019. Is he correct?

(B) *Malo* was charged with *estafa* under Article 315 because he misrepresented that he had influence, when he actually had none. Is the charge correct?

#### ANSWER:

(A) No. *Malo* is not correct. One may be charged with violation of RA 3019 in addition to a felony under the RPC for the same act. This is expressly provided for in Section 3, RA 3019 which states: "In addition to acts or omissions of public officers already penalized by existing laws, the following shall constitute corrupt practices of public officers and hereby declared to be unlawful: xxx" Moreover, RA 3019 is a special law, hence, the elements of the offense are not the same as those penalized under the RPC.

(B) Yes, the charge is correct. *Estafa* is committed by any person who shall ask money from another for the alleged purpose of bribing a government employee when in truth the offender intended to convert the money for his own personal use and benefit. (*Article 315[2][c], RPC*)

#### XV.

Which of the following is not a privilege mitigating circumstance? (1%)

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

## XVI.

*Mr. Benjie* is the owner of a hardware store specializing in the sale of plumbing materials. On February 1, 2014, *Mr. Ed*, a friend and regular customer of *Mr. Benjie*, visited the hardware store and purchased several plumbing materials in the total amount of P5 million. *Mr. Benjie* readily accepted *Mr. Ed's* payment of three (3) postdated checks in the amount of P1 million Pesos each in view of the assurance of *Mr. Ed* that the checks will be honored upon presentment for payment. *Mr. Benjie*, as a consequence, immediately delivered the materials to the house of *Mr. Ed*. The following day, *Mr. Ed* went back to *Mr. Benjie* to tender another two (2) postdated checks in the amount of P1 million each to complete the payment, with the same assurance that the checks will be honored upon presentment for payment. When the checks were presented for payment, all were dishonored for insufficiency of funds and corresponding notices of dishonour were sent and received by *Mr. Ed*. One month after receipt of the notices of dishonor, *Mr. Ed* failed to make good the checks. Thereafter, *Mr. Benjie* filed before the public prosecutor's office a complaint against *Mr. Ed*, although no demand letter was earlier sent to *Mr. Ed*.

During the preliminary investigation, *Mr. Benjie* accepted several amounts from *Mr. Ed* as partial payments. The wife of *Mr. Benjie* protested and insisted that the complaint should continue despite the partial payments. On the other hand, *Mr. Ed* counters that no demand letter was earlier sent to him, that the obligation is merely civil in character and that novation took place when *Mr. Benjie* accepted the partial payments.

Discuss the criminal liability, if any, of *Mr. Ed*. (6%)

### ANSWER:

*Mr. Ed* is liable of one count of *Estafa* under Article 315(2)(d) for the issuance of the first 3 checks because he issued them simultaneous with the transaction in order to defraud another. However, the 2 other checks had been issued in payment of a pre-existing obligation, hence, *estafa* is not committed as the issuance of said checks was not the efficient cause of defraudation.

*Mr. Ed* is also liable of 5 counts of violation of BP 22, The Bouncing Checks Law, for the issuance of the 5 checks which were dishonoured for insufficiency of funds. The gravamen of BP 22 is the issuance of a worthless or bum check; deceit/fraud is not an element.

*Mr. Ed's* defense of partial payments constituting novation and absence of demand letter will not free him from the criminal liability already incurred. The partial payments would only affect his civil liability while his claim of absence of demand letter is negated by the receipt of notice of dishonour.

XVII.

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

Is *Pierce* correct? (3%)

ANSWER:

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

XVIII.

*Manolo*, an avid art collector, was invited to *Tonio's* house. There, *Manolo* noticed a nice painting that exactly looked like the painting which he reported was stolen from him some years back. *Manolo* confronted *Tonio* about the painting, but *Tonio* denied any knowledge, claiming that he bought the painting legitimately from a friend. *Manolo* later proved to *Tonio* that the painting was indeed the stolen painting. (4%)

(A) What crime/s, if any, may *Tonio* be charged with?

(B) *Manolo* decided to take matters into his own hands and, one night, broke into *Tonio's* house by destroying the wall and taking the painting. What, if any, would be the liability of *Manolo*?

ANSWER:

(A) *Tonio* may be charged with violation of PD 1612, The Anti-Fencing Law. Under Section 5 of the said law, mere possession of any article, item, object, or anything of value which has been the proceeds of robbery or thievery is *prima facie* evidence of fencing. Since *Tonio* is in possession of a stolen painting, the law presumes that he committed the crime of fencing.

(B) *Manolo* is liable of Qualified Trespass to Dwelling under Article 280, RPC. Trespass to dwelling is qualified by use of force and violence since *Manolo* entered the house of *Tonio* against the will of the latter.

XIX.

*Clepto* went alone to a high-end busy shop and decided to take one of the smaller purses without paying for it. Overcome by conscience, she decided to leave her own purse in place of the one she took. Her act was discovered and *Clepto* was charged with theft. She claimed that there was no theft, as the store suffered no injury or prejudice because she had left a purse in place of the one she took.

Comment on her defense. (3%)

ANSWER:

The defense of *Clepto* has no merit. Theft is already consummated from the moment *Clepto* took possession of one of the smaller purses inside a high-end shop, without paying for it. She took the personal property of another, with intent to gain, without the consent of the latter. Damage or injury to the owner is not an element of theft, hence, even if she left her purse in lieu of the purse she took, theft is still committed.

XX.

Which of the following is not a qualifying aggravating circumstance? (1%)

- (A) treachery
- (B) evident premeditation
- (C) dwelling
- (D) cruelty

XXI.

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

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

The judge trying the theft case in 2014 is about to convict AA. What circumstances affecting the liability or penalty may the judge appreciate against AA? (4%)

ANSWER:

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

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

XXII.

*Mr. Red* was drinking with his buddies, *Mr. White* and *Mr. Blue* when he saw *Mr. Green* with his former girlfriend, *Ms. Yellow*. Already drunk, *Mr. Red* declared in a loud voice that if he could not have *Ms. Yellow*, no one can. He then proceeded to the men's room but told *Mr. White* and *Mr. Blue* to take care of *Mr. Green*. *Mr. Blue* and *Mr. White* asked *Mr. Red* what he meant but *Mr. Red* simply said, "You already know what I want," and then left. *Mr. Blue* and *Mr. White* proceeded to kill *Mr. Green* and hurt *Ms. Yellow*. (4%)

(A) What, if any, are the respective liabilities of *Mr. Red*, *Mr. White* and *Mr. Blue* for the death of *Mr. Green*?

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

ANSWER:

(A) *Mr. White* and *Mr. Blue* are liable for the death of *Mr. Green* as principals by direct participation. They were the ones who directly took part in the killing of the victim. *Mr. Red* is not liable as a principal by inducement because his statement that *Mr. White* and *Mr. Blue* were “to take care of *Mr. Green*” was not made directly with the intent of procuring the commission of the crime. The words he uttered to *Mr. White* and *Mr. Blue*: “You already know what I want,” may not be considered as powerful and threatening so as to amount to physical or moral coercion. Likewise, there is no showing that *Mr. Red* exercised moral ascendancy or influence over *Mr. White* and *Mr. Blue*.

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

XXIII.

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

Is the prosecutor correct? If he is not correct, can he instead file a case of grave coercion? (4%)

ANSWER:

The Prosecutor is not correct. There is no “Impossible crime to commit kidnapping”. First, an impossible crime applies only to Crimes against Persons and Crimes against Property under Titles 8 and 10 of the RPC, respectively. Kidnapping is a Crime against Personal Liberty and Security under Title 9, RPC. Second, even if the ransom note was not received by *Carla*’s parents, the crime of kidnapping and serious illegal detention for ransom is already consummated. Under Article 267, RPC, Kidnapping for Ransom is committed “when the kidnapping or detention is for the purpose of extorting ransom from the victim or any other person.” To consummate the crime, it

suffices that the purpose is to extort ransom; it is not necessary that the ransom note be received or that ransom be paid.

No, the Prosecutor cannot file a case of grave coercion because the crime committed, as explained above, is kidnapping for ransom.

#### XXIV.

A, a young boy aged sixteen (16) at the time of the commission of the crime, was convicted when he was already seventeen (17) years of age for violation of Section 11 of R.A. 9165 or Illegal Possession of Dangerous Drugs for which the imposable penalty is life imprisonment and a fine. Section 98 of the same law provides that if the penalty imposed is life imprisonment to death on minor offenders, the penalty shall be *reclusion perpetua* to death. Under R.A. 9344, a minor offender is entitled to a privileged mitigating circumstance. (8%)

(A) May the privileged mitigating circumstance of minority be appreciated considering that the penalty imposed by law is life imprisonment and fine?

(B) Is the Indeterminate Sentence Law applicable considering that life imprisonment has no fixed duration and the Dangerous Drugs Law is *malum prohibitum*?

(C) If the penalty imposed is more than six (6) years and a notice of appeal was filed by A and given due course by the court, may A still file an application for probation?

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

#### ANSWER:

(A) Yes. As stated above, under Section 98, RA 9165, if the offender is a minor, the penalty of life imprisonment shall be considered as *reclusion perpetua*. Now that it has the nomenclature of penalties under the RPC, the modifying circumstances therein may also be applied. Even if *reclusion perpetua* is a single indivisible penalty, the privileged mitigating circumstance of minority would still be considered to lower the imposable penalty. The rule in Article 63, RPC that if the penalty prescribed by law is a single indivisible penalty, it shall be imposed regardless of mitigating and aggravating circumstance refers only to ordinary mitigating circumstances.

(B) Yes. The Indeterminate Sentence Law is applicable even to special penal laws. Since life imprisonment was converted into *reclusion perpetua*, which in turn was graduated to *reclusion temporal* because of the privileged mitigating circumstance of minority, the Indeterminate Sentence Law is applicable. (*People vs. Mantalaba, GR 186227, July 20, 2011*)

(C) Yes. A may still file an application for probation even if he filed a notice of appeal. Section 42, RA 9344 provides: "The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on

probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of PD 968, otherwise known as the Probation Law of 1976, is hereby amended accordingly.”

The phrase “at any time” mentioned in Section 42 means that the child in conflict with the law may file an application for probation at any time, even beyond the period for perfecting an appeal and even if the child has perfected the appeal from the judgment of conviction.

(D) If probation is not allowed by the court, the minor offender shall serve his sentence in agricultural camp or other training facility in accordance with Section 51 of RA 9344 as amended.

## XXV.

*Mr. Gray* opened a savings account with Bank A with an initial deposit of P50,000.00. A few days later, he deposited a check for P200,000.00 drawn from Bank B and endorsed by *Mr. White*. Ten days later, *Mr. Gray* withdrew the P200,000.00 from his account. *Mr. White* later complained to Bank B when the amount of P200,000.00 was later debited to his account, as he did not issue the check and his signature thereon was forged. *Mr. Gray* subsequently deposited another check signed by *Mr. White* for P200,000.00, which amount he later withdrew. Upon receiving the amount, *Mr. Gray* was arrested by agents of the National Bureau of Investigation (NBI). *Mr. Gray* was convicted of *estafa* and attempted *estafa*, both through the use of commercial documents. (4%)

(A) *Mr. Gray* claims as defense that, except for *Mr. White*'s claim of forgery, there was no evidence showing that he was the author of the forgery and *Mr. White* did not suffer any injuries as to the second check (attempted *estafa*). Rule on the defense of *Mr. Gray*.

(B) *Mr. Gray* claims that he was entrapped illegally because there was no showing that the second check was a forgery and, therefore, his withdrawal based on the second check was a legal act. Is *Mr. Gray* correct?

### ANSWER:

(A) The first defense of *Mr. Gray* that there was no evidence showing that he was the author of the forgery has no merit. The law presumes that the possessor and user of a falsified document is the falsifier or forger thereof. Likewise, his second defense that *Mr. White* did not suffer any injuries as to the second check (attempted *estafa*) has no merit. Damage or intent to cause damage is not considered in attempted *estafa*. It is considered only in consummated *estafa*.

(B) *Mr. Gray* is not correct. The fact that the first check is forged justifies the entrapment of *Mr. Gray* since there is already probable cause that the second check is also a forgery. Further, granting for the sake of argument that the entrapment was illegal, such will not validate the withdrawal based on the second check

which is also forged. His criminal liability in forging the second check is not affected by the alleged illegality of the entrapment procedure.

XXVI.

A was bitten by a dog owned by a neighbor. The following day, angered by the incident, A took the dog without the knowledge of the owner, had it butchered and cooked the meat. He then invited his friends to partake of the dish with his friends who knew fully well that the dog was taken without the knowledge of the owner. What are the friends of A liable for? (1%)

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

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