ACT NO. 3815
REVISED PENAL CODE

BOOK ONE

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CRIMINAL LAW is that branch or division of law which defines crimes, treats of their nature, and provides for their punishment.

CRIME is an act committed or omitted in violation of a public law forbidding of commanding it.

SOURCES OF PHILIPPINE CRIMINAL LAW
1. Revised Penal Code (Act No. 3815) and its amendments
2. Special Penal Laws
3. Penal Presidential Decrees

COMMON LAW CRIMES. Body of principles, usages and rules of action, which do not rest for their authority upon any express and positive declaration of the will of the legislature

►Common law crimes are not recognized in Philippine jurisdiction. Unless there is a provision in the penal code or special penal law that defines and punishes the act, no criminal liability is incurred by its commission.

LIMITATIONS ON ENACTIING PENAL LAWS
1. No ex post facto law or bill of attainder shall be enacted.
2. No person shall be held to answer for a criminal offense without due process of law.

EX POST FACTO LAW is one which:
1. Makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;
2. Aggravates a crime, or makes it greater than it was when committed;
3. Changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
4. Alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of commission of the offense;
5. Assumes to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
6. Deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

BILL OF ATTAINDER is a legislative act which inflicts punishment without trial; the substitution of a legislative act for a judicial determination.

CONSTITUTIONAL RIGHTS OF THE ACCUSED
(As provided for in the Bill of Rights)

1. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. (Sec 16)

2. No person shall be held to answer for a criminal offense without due process of law. (Sec 14(1))

3. All persons, except those charged with reclusion perpetua when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law.

   The right to bail shall not be impaired even when the privilege of writ of habeas corpus is suspended.

   Excessive bail shall not be required. (Sec 13)

4. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Sec 14(2))

5. No person shall be compelled to witness against himself. (Sec 17)

   Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice.

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If the person cannot afford the services of counsel, he must be provided with one.

These rights cannot be waived except in writing and in the presence of counsel. (Sec 12(1))

No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited. (Sec 12(2))

Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. (Sec 12(3))

6. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted (Sec 19(1))

7. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. (Sec 21)

8. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

STATUTORY RIGHTS OF AN ACCUSED
(As provided for in Sec 1, Rule 115 of the Revised Rules on Criminal Procedure)

1. To be innocent until the contrary is proved beyond reasonable doubt
2. To be informed of the nature and cause of the accusation against him
3. To be present and defined in person and by counsel at every stage of the proceedings, from arraignment to promulgation of judgment
4. To testify as a witness in his own behalf but subject to cross examination. His silence shall not in any manner prejudice him.
5. To be exempt from being compelled to be a witness against himself.
6. To confront and cross-examine the witnesses against him at a trial.
7. To have a compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
8. To have a speedy, impartial, and public trial.
9. To appeal in all cases allowed and in the manner prescribed by law.

►Rights which may be waived are personal (eg right to confrontation and cross examination), while those rights which may not be waived involve public interest which may be affected (eg right to be informed of the nature and cause of the accusation).

CHARACTERISTICS OF CRIMINAL LAW

A. **General**
B. **Territorial**
C. **Prospective**

A. GENERAL.
►Criminal law is binding on all persons who live and sojourn in Philippine territory. (Art 12 NCC)

⇨ Exceptions
1. Treaties or treaty stipulation
2. Law of preferential application
3. Principles of public international law

1. Treaties and Treaty Stipulation, example

a. Visiting Forces Agreement. It is the membership to the US Armed Forces and not citizenship which is material in the VFA.

1) The US shall have the right to exercise within the Philippines all criminal and disciplinary jurisdiction conferred on them by the military law of the US over US personnel in the Philippines;
2) The US exercised exclusive jurisdiction over US military personnel with regard to offenses relating to the security of the US punishable under the law of US, but nor under the law of Philippines;
3) The US shall have primary right to exercise jurisdiction over US military in relation to:
   - Offenses solely against the property or security of the US or offenses solely against the property or person of US personnel
   - Offenses arising out of any act or omission done in performance of official duty
4) Philippines cannot refuse the request of US for waiver of jurisdiction except if the crime is of national importance:
   ⇨ Heinous Crimes under RA 7659
   ⇨ Child Abuse cases under RA 7610
   ⇨ Dangerous Drugs cases under RA 9165

2. Laws of Preferential Application

a. RA 75. The following are exempt from arrest and imprisonment and whose goods or chattel are exempt from distrain, seizure and attachment are the following:

1) Public Ministers;
2) Ambassadors; and
3) Domestic Servants of Ambassadors and Public Ministers.

   ⇨ **Exceptions:** Persons against whom the case is prosecuted is a
   - Citizen or inhabitant of the Philippines in the service of an ambassador or public minister and the process is founded upon a debt contracted before he entered upon such service; and
   - Domestic servant of an ambassador or public minister which is not registered with the DFA
   - Where the country of the diplomatic representative affected does not provide similar protection to diplomatic representatives of the Philippines.

b. **Warship Rule.** A warship of another country even though docked in the Philippines is considered as an extension of the territory of their respective country. The same applies to foreign embassies in the Philippines. Philippine warship and embassies abroad are deemed extra territories of the Philippines.

3. Principles of Public International Law. The following are exempted:

a. Sovereigns and other chiefs of state
b. Charge d'affaires
c. Ambassadors
d. Ministers plenipotentiary; and
e. Ministers resident.

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- ⇨ **Exception.** Doctrine of immunity does not apply where the public official is sued in his private and personal capacity as an ordinary citizen.

B. TERRITORIAL.

►As a rule, the penal laws of the Philippines are enforceable only within its territory.

- ⇨ Article 2. RPC may be enforeced outside of Philippine jurisdiction against those who:
  1. Should commit an offense while on a Philippine ship or airship;
  2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
  3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
  4. While being public officers or employees, should commit an offense in the exercise of their functions; or
  5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

C. PROSPECTIVE.

►A penal law cannot make an act punishable in a manner in which it was not punishable when committed. Crimes are punished under the laws in force at the time of their commission. (Art 366, RPC)

- ⇨ **Exception.** Applied retroactively whenever a new statute dealing with crime establishes conditions more lenient or favorable to the accused
  - ⇨ **Exception to Exception.**
    a. Where the law is expressly made inapplicable to pending actions or existing causes of action
    b. Where the offender is a habitual criminal
- ⇨ (Decriminalization) If the new law totally repeals the existing law so that the act which was penalized under the old law is no longer punishable, the crime is obliterated. <u>When the repeal is absolute, the offense ceases to be criminal.</u>
  - ⇨ **Exception to Exception.** When the repeal of a penal law is by reenactment or repeal by implication, criminal liability is not destroyed.

Habitual Delinquent. If within a period of ten years from the date of his release or last conviction of the crimes robo, hurto, estafa, or falsificacion, he is found guilty of any of said crimes a third time or oftener.

►When the repealing law fails to penalize the offense under the old law, the accused cannot be convicted under the new law.

CONSTRUCTION OF PENAL LAWS

►Penal laws are strictly construed against the Government and liberally in favor of the accused. ***<u>Dubio Pro Reo.</u>*** Whenever a penal law admits two interpretation that which is more lenient or favorable to the offender will be adopted.

►The Spanish text is controlling because RPC was approved by the Philippine Legislature in Spanish text.

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PRELIMINARY TITLE
DATE OF EFFECTIVENESS AND APPLICATION OF THE PROVISIONS OF THIS CODE

ARTICLE 1. Time When Act Takes Effect. — This Code shall take effect on the first day of January, nineteen hundred and thirty-two.

September 4, 1884	Royal Decree ordered that the Penal Code in force in the Peninsula as amended in accordance with the recommendations of the code committee be published and applied in the Philippines
December 17, 1886	Royal Decree ordering the execution of the Sept 4, 1884 Royal Decree
March 13-14, 1887	Publication in the Official Gazette
Four months after (July 1887)	Became effective
December 8, 1930	RPC as enacted by the Philippine Legislature was approved
January 1, 1932	RPC took effect

TWO BOOKS IN RPC

1. **BOOK 1**
   a. Basic principles affecting criminal liability (Art 1-20)
   b. Provisions on penalties including criminal and civil liability (Art 21-113)
2. **BOOK 2**
   - Defines felonies with corresponding penalties classified and grouped under 14 different titles (Art 114-365)

TWO THEORIES IN CRIMINAL LAW

CLASSICAL THEORY	POSITIVIST THEORY
Basis of criminal liability is free will	Man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition
Purpose of penalty is retribution; Establishes a mechanical and direct proportion between crime and penalty	It cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of punishment fixed and determined a priori
Places more stress in the effect or result of the felonious act upon the man; Scant regard to human element	Enforcement of individual measures in each particular case after a thorough, personal and individual investigation by a psychiatrists and social scientists

ARTICLE 2. Application of Its Provisions. — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. **Should commit an offense while on a Philippine ship or airship;**
2. **Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;**
3. **Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;**
4. **While being public officers or employees, should commit an offense in the exercise of their functions; or**
5. **Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.**

►The provisions of the RPC shall be enforced within the Philippine Archipelago.

⇨ **Extraterritoriality.** RPC may be enforced outside of Philippine jurisdiction in certain cases (per Article 2)
   1. Should commit an offense while on a Philippine ship or airship;
   2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
   3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
   4. While being public officers or employees, should commit an offense in the exercise of their functions; or
   5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

⇨ Extraterritorial application of RA 9372 or the Human Security Act of 2007

OFFENSES COMMITTED WHILE ON A PHILIPPINE SHIP OR AIRSHIP

a. MECHANT SHIP OF PHILIPPINE NATIONALITY; registered with the Philippine Bureau of Customs
   1) Within Philippine territory. Philippines has jurisdiction
   2) Within high seas, no country has jurisdiction. Philippines has jurisdiction
   3) Within the territory of another country. Other country has jurisdiction,
      ⇨ **BUT** when that foreign country will not take cognizance of the issue, Philippines can assume jurisdiction

b. WARSHIP OR OFFICIAL VESSEL OF THE PRESIDENT OF THE PHILIPPINES
   - Extension of the Philippines and its sovereignty, RPC applies

c. FOREIGN MERCHANT SHIP OR AIRSHIP
   1) Within high seas. Extension of territory of the country where it belongs, hence, an offense committed on board a foreign vessel on the high seas is not triable by Philippine courts
      ⇨ **Continuing crimes.** When the forbidden conditions (continued or) existed during the

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time the ship was within territorial waters of the Philippines

2) **ENGLISH RULE.** Crimes committed on board a foreign merchant vessel within Philippine waters is triable in the Philippines
   ⇨ **Unless** they merely affect things within the vessel or they refer to the internal management thereof; e. g. mere possession of opium without using them is not triable in Philippine courts

   [**FRENCH RULE.** Crimes committed aboard foreign merchant vessels while in the territorial waters of another country are not triable in the courts of that country, unless their commission affects the peace and security of the territory or the safety of the state is endangered]

OFFENSES COMMITTED IN THE EXERCISE OF PUBLIC OFFICER/ EMPLOYEE'S FUNCTIONS

a. Direct and indirect bribery
b. Frauds against the public treasury
c. Possession of prohibited interest
d. Malversation of public funds or property
e. Failure of accountable officer to render accounts
f. Illegal use of public funds or property
g. Failure to make delivery of public funds or property
h. Falsification by a public officer or employee committed with abuse of his official position

CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

1. Treason
2. Conspiracy and proposal to commit treason
3. Espionage
4. Inciting to war and giving motives for reprisals
5. Violation of neutrality
6. Correspondence with hostile country
7. Flight to enemy's country
8. Piracy and mutiny on the high seas

TITLE ONE
FELONIES AND CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

CHAPTER ONE
FELONIES

ARTICLE 3. Definition. — Acts and omissions punishable by law are felonies (delitos).

Felonies are committed not only by means of deceit (dolo) but also by means of fault (culpa).

There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

FELONIES are acts and omissions punishable by the Revised Penal Code.

CRIME is a generic term used to refer to a wrongdoing punished either under the RPC or special laws; an act committed or omitted in violation of a public law forbidding or commanding it

OFFENSE is an act or omission that violates a special penal law

MISDEMEANOR is a minor infraction of law.

ELEMENTS OF FELONIES

1. There must be an act or omission
2. The act or omission must be punishable by the RPC
3. The act is performed or the omission incurred by means of dolo or culpa

ACT is any bodily movement tending to produce some effect in the external world, it being unnecessary that the same be actually produced, as the possibility of its production is sufficient; must be **external acts** which has direct connection with the felony intended to be committed

OMISSION is meant inaction, or the failure to perform a positive duty which one is bound to do as required by law.

NULLUM CRIMEN, NULLA POENA SINE LEGE
There is no crime where there is no law punishing it

CLASSIFICATION OF FELONIES

1. **INTENTIONAL FELONIES (DOLO).** The acts or omissions are malicious and that the act is performed with deliberate intent; the offender has the intention to cause injury to another
2. **CULPABLE FELONIES (CULPA).** The act or omission is not malicious; the injury caused by the offender to another person is not intentional, it being simply the incident of another act performed without malice; results from imprudence, negligence or lack of foresights or lack of skill

DOLO or **MALICE** is the intent to do an injury to another.

REQUISITES OF INTENTIONAL FELONIES (DOLO)

1. **Freedom.** Voluntariness on the part of the person to commit the act or omission; Lack of freedom makes the offender exempt from liability
2. **Intelligence.** Necessary to determine the morality of human acts, without which, no crime can exist.
3. **Intent.** Criminal intent and the will to commit; a mental state which is shown by the overt acts of a person

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REQUISITES OF CULPABLE FELONIES (CULPA)

1. **Freedom**
2. **Intelligence**
3. **Imprudence, Negligence, or lack of foresight or skill** while doing the act or omitting to do the act

IMPRUDENCE indicates a deficiency of action; lack of skill; when a person fails to take the necessary precaution to avoid injury to person or damage to property

NEGLIGENCE indicates a deficiency in perception; lack of foresight; when a person fails to pay proper attention and to use due diligence in foreseeing the injury or damage impending to be caused

ACTUS NON FACIT REUM, NISI MENS SIT REA
A crime is not committed if the mind of the person performing to act complained be innocent

►If it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention and that it is for the accused to rebut this presumption; The acts from which the presumption springs must be a criminal act

- ⇨ When the acts complained of was not unlawful, presumption of criminal intent does not arise

IGNORANTIA FACTI EXCUSAT
Ignorance or mistake of fact relieves the accused from criminal liability; an honest mistake of fact destroys the presumption of criminal intent

- ⇨ Mistake of fact is not a valid defense in **Culpable Felonies**
- ⇨ In **error in personae/ mistake of identity,** mistake of fact is does not apply

REQUISITES OF MISTAKE OF FACT

1. That the act done would have been lawful had the facts been as the accused believed them to be
2. That the intention of the accused in performing the act should be lawful
3. That the mistake must be without fault or carelessness in the part of the accused

MALA IN SE V MALA PROHIBITA

MALA IN SE	MALA PROHIBITA
Wrong from its very nature, or inherently evil	Wrong or evil because there is a law prohibiting it
Generally, punishable under RPC	Generally, punishable under special laws
Basis of criminal liability is offenders moral train	Basis of criminal liability is offender's voluntariness
Good faith or lack of criminal intent is a defense	Good faith or criminal intent is NOT accepted as a defense, UNLESS this is an element of the crime
Modifying circumstances are taken into account in imposing the penalty	Modifying circumstances are not considered
Degree of participation determines the penalty imposable	Degree of participation does not affect liability, hence, principals, accomplices and accessories have the same penalty
Stage of accomplishment affects the penalty imposed	Penalized only when consummated
Generally involved moral turpitude	Generally does not involve moral turpitude
Penalties may be divided into degrees and periods	There is no division of penalties

►Special Laws are considered mala prohibita.

- ⇨ When such special law is an amendment to the RPC
- ⇨ When acts are inherently immoral, they are mala in se, even if punished under special law

INTENT V MOTIVE

INTENT	MOTIVE
The purpose to use a particular means to effect such result	The moving power which impels one to action for a definite result
An element of the crime, except in unintentional felonies (culpa)	Not an element of the crime, need not be proved
Essential in intentional felonies	Essential only when the identity of the perpetrator is in doubt

WHEN MOTIVE IS RELEVANT

1. Motive is essential only when there is doubt as to the identity of the assailant. It is immaterial when the accused has been positively identified.
2. Where the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free from doubt
3. in ascertaining the truth between two antagonistic theories
4. where there are no eyewitnesses to the crime and where suspicion is likely fall upon a number of persons
5. if evidence is merely circumstantial

►Proof (and existence) of motive alone is not sufficient to support a conviction

►Lack of motive may be an aid in showing the innocence of the accused.

ARTICLE 4. Criminal Liability. — Criminal liability shall be incurred:

1. **By any person committing a felony (delito) although the wrongful act done be different from that which he intended.**
2. **By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.**

►A person **committing a felony by means of dolo** is criminally liable although the **wrongful acts done is different from that which he intended**. A person who performs a criminal act is responsible for all the consequences of said act regardless of intention.

EL QUE ES CAUSA DE LA CAUSA ES CAUSA DEL MAL CAUSADO
He who is the cause of the cause is the cause of the evil caused

REQUISITES, ARTICLE 4 PAR 1

1. That an intentional felony has been committed
   - ⇨ **Exceptions**
     a. When the act or omission is not punishable by the RPC
     b. When the act is covered by any of the justifying circumstances under Art 11
2. That the wrong done to the aggrieved party be the direct, natural and logical consequence of the felony committed by the offender
   - the felony committed is the proximate cause of the resulting injury

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CAUSES WHICH MAY PRODUCE A RESULT DIFFERENT FROM WHAT THE OFFENDER INTENDED

1. **ERROR IN PERSONAE.** Mistake in the identity of the victim.
2. **ABBERATIO ICTUS.** Mistake by blow.
3. **PRAETER INTENTIONEM.** Injurious result is greater than that intended.

►Any person who creates in another's mind an immediate sense of danger, which causes the latter to do something resulting in the latter's injuries, is liable for the resulting injuries. *(eg woman jumped out of a jeepney and dies during is hold-up incident)*

►Victim is under no obligation to submit to medical operation to relieve the accused from the natural and ordinary results of his crime.

PROXIMATE CAUSE is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

WHEN FELONY IS NOT THE PROXIMATE CAUSE

a. There is an active force that intervened between the felony committed and the resulting injury, and the active force is a distinct act or fact absolutely foreign from the felonious act of the accused; or
b. The resulting injury is due to the intentional act of the victim.

REQUISITES, WHEN DEATH IS PRESUMED AS A NATURAL CONSEQUENCE OF PHYSICAL INJURIES INFLICTED

1. The victim at the time the physical injuries were inflicted was in normal health
2. Death may be expected from the physical injuries inflicted
3. Death ensued within reasonable time

REQUISITES, WHEN THE FELONY IS NOT THE PROXIMATE CAUSE OF THE RESULTING INJURY

1. There is an active force that intervened between the felony committed and the resulting injury, and the active force is distinct act or fact absolutely foreign from the felonious act of the accused; or
2. The resulting injury is due to the intentional act of the victim

IMPOSSIBLE CRIME, REQUISITES

1. That the act performed would be an offense against persons or property
2. That the act was done with evil intent
3. That its accomplishment is
   a. inherently impossible, or
   b. that the means employed is either inadequate or
   c. (the means employed is) ineffectual,
4. That the act performed should not constitute a violation of another provision in the RPC

FELONIES AGAINST PERSONS

a. Parricide
b. Murder
c. Homicide
d. Infanticide
e. Abortion
f. Duel
g. Physical injuries
h. Rape

FELONIES AGAINST PROPERTY

a. Robbery
b. Brigandage
c. Theft
d. Usurpation
e. Culpable Insolvency
f. Swindling and other deceipts
g. Chattel mortgage
h. Arson and other crimes involving destruction
i. Malicious mischief

A. INHERENT IMPOSSIBILITY OF ITS ACCOMPLISHMENT

1. The act intended by the offender is by its nature one of impossible accomplishment
2. There must be **Legal Impossibility or Physical Impossibility**

B. EMPLOYMENT OF INADEQUATE MEANS
(e.g. amount of poison used to kill another was not enough)

C. EMPLOYMENT OF INEFFECTUAL MEANS
(e.g. used salt instead of poison arsenic)

ARTICLE 5. Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

PARAGRAPH 1	PARAGRAPH 2
The act committed by the accused appears not punishable by law But the court deems it proper to repress such act	The court finds the accused guilty The penalty provided by law appears to be clearly excessive because a. the accused acted with lesser degree of malice and/or b. there is no injury or the injury caused is of lesser gravity
The court must dismiss the case and acquit the accused	The court should not suspend the execution of the sentence
Judge will make a report to Chief Executive through SOJ stating the reasons which induce him to believe that the said act should be made the subject of penal legislation	Judge should submit a statement to the Chief Executive through the SOJ recommending executive clemency

ARTICLE 6. Consummated, Frustrated, and Attempted Felonies. — Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which,

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nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

STAGES OF COMMITTING A CRIME

1. **INTERNAL ACTS.** Mere ideas in the minds of a person, are not punishable, even if had they been carried out, they would constitute a crime.
2. **EXTERNAL ACTS**.
   a. **PREPARATORY ACTS.** Ordinarily, they are not punishable
      ⇨ **Except** when the law provides for their punishment
   b. **ACTS OF EXECUTION.** Punishable under RPC
      1) **ATTEMPTED FELONY.** When the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

      2) **FRUSTRATED FELONY.** When the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator,

      3) **CONSUMATED FELONY.** When all the elements necessary for its execution and accomplishment are present.

ELEMENTS OF ATTEMPTED FELONY

1. The offender commences the commission of the felony directly by overt acts
   - external acts have direct connection with the crime intended to be committed, should be mere preparatory acts
2. He does not perform all the acts of execution which should produce the felony
3. The offender's act is not stopped by his own spontaneous desistance
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance

OVERT ACTS. Some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator will logically and necessarily ripen into a concrete offense

e.g. Buying a poising is a preparatory activity. Poison may be used for some other purpose other than killing somebody, and buying may not prove criminal intent. Mixing it with a person's food is an overt act.

INDETERMINATE OFFENSE. Where the purpose of the offender in performing an act is not certain. Its nature in relation to its objective is ambiguous.

PHASES OF A FELONY

a. **SUBJECTIVE PHASE.** It is that portion of the acts constituting the crime, starting from the point where the offender begins the commission of the crime to that point where he has still control over his acts including their natural course.
b. **OBJECTIVE PHASE.**

►In an attempted felony, the offender never passes the subjective phase of the offense. In a frustrated felony, the offender has reached the Objective Phase.

ELEMENTS OF FRUSTRATED FELONY

a. The offender performs all the acts of execution
b. All the acts performed would produce the felony an a consequence
c. Bu the felony is not produced
d. By reason of causes independent of the will of the perpetrator

ARTICLE 7. When light felonies are punishable. - Light felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

LIGHT FELONIES are those infractions of law for the commission of which the penalty of arresto menor (one to thirty days) or a fine not exceeding P200, or both, is provided.

►Light felonies are punishable only when they have been consummated
⇨ Light felonies are punishable even if attempted or frustrated when committed against persons or properties.

LIGHT FELONIES PUNISHED BY RPC

a. **Against person**
   1. Slight Physical Injuries and maltreatment

b. **Against property**
   1. Theft by hunting or fishing or gathering fruits, cereal or other forest or farm products upon an inclosed estate or field where trespass is forbidden and the value of the thing stolen does not exceed P5.00
   2. Theft where the value of the stolen property does not exceed P5.00 and the offender was prompted by hunger, poverty, or the difficulty of earning a livelihood
   3. Alteration of boundary marks
   4. Malicious mischief where the damage is not more than P200.00 or if it cannot be estimated

ARTICLE 8. Conspiracy and proposal to commit felony. - Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

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

►Conspiracy and proposal to commit felony are not punishable.
⇨ They are punishable only in cases in which the law specially provides a penalty therefore.

MERE CONSPIRACY PUNISHED BY RPC

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1. Conspiracy to commit treason
2. Conspiracy to commit coup d' etat, rebellion or insurrection
3. Conspiracy to commit sedition
4. Monopolies and combinations in restraint of trade
   a. To restraint trade or commerce or to prevent by artificial means free competition in the market
   b. Making transactions prejudicial to lawful commerce, or of increasing the market price of any such merchandise

MERE PROPOSAL PUNISHED BY RPC

1. Proposal to commit treason
2. Proposal to commite coup d' etat, rebellion or insurrection

►When the crime is actually committed, the offenders are liable for the crime and the conspiracy is only a manner of incurring criminal liability and is not punishable as a separate offense.

REQUISITES OF CONSPIRACY

1. Two or more persons came to an agreement (there must be meeting of the minds)
2. The agreement concerned the commission of a felony, and
3. The execution of a felony is decided upon

REQUISITES OF PROPOSAL

1. That a person has decided to commit a felony, and
2. That he proposes its execution to some other person or persons.

NO CRIMINAL PROPOSAL WHEN

1. The person who proposes is not determined to commit the felony
2. There is no decided, concrete and formal proposal
3. It is not the execution of a felony that is proposed

►It is not necessary that the person to whom the proposal is made agrees to commit treason or rebellion. When the person to whom the proposal is made agrees, it may be conspiracy because there would be an agreement to commit it.

ARTICLE 9. Grave felonies, less grave felonies and light felonies. - Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Art. 25 of this Code.

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned article.

Light felonies are those infractions of law for the commission of which a penalty of arrest menor or a fine not exceeding Forty thousand pesos (P40,000.00) or both; is provided. (Amended by RA 10951)

FELONIES	PENALTY	ART 25
GRAVE	Those which the law attaches the capital punishment (death penalty) or penalties, which in their periods are **afflictive,** in accordance with Article 25 of RPC	1. Death 2. Reclusion perpetua, 3. Reclusion temporal, 4. Perpetual or temporary absolute disqualification, 5. Perpetual or temporary special disqualification, 6. Prision mayor.
LESS GRAVE	Those which the law punishes with penalties, which their maximum period are **correctional**, in accordance with the abovementioned article	1. Prision correccional, 2. Arresto mayor, 3. Suspension, 4. Destierro.
LIGHT	Those infractions of the law for the commission of which the penalty of arresto menor or a fine not exceeding P200.00, or both, is provided **Note: RA 10951** increased the fine for light felonies from 200 pesos to 40,000.00 pesos.	1. Arresto menor, 2. Public censure.

ARTICLE 10. Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

SPECIAL LAW. A penal law which punishes acts not defined and penalized by the Penal Code; a statute enacted by the Legislative branch, penal in character, which is not an amendment to the Revised Penal Code

►RPC provisions are supplementary to special laws.

⇨ Exceptions
   a. Where a special law provides otherwise
   b. When the provisions of the RPC are impossible of application, either by express provision or by necessary implication

Examples of RPC provisions that are not applicable to Special Laws

a. Graduation of penalties (minimum, medium, maximum)
b. Article 6 (attempted, frustrated, consummated); there is no attempted or frustrated violation of a Special Penal Law unless provided by the law itself
c. Mitigating or aggravating circumstances
d. No accessory penalties unless the law provides

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CHAPTER TWO
JUSTIFYING CIRUMSTANCES AND CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY

CIRCUMSTANCES THAT AFFECT CRIMINAL LIABILITY:

1. **Justifying Circumstances.** Those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability.

   The law recognizes the non-existence of a crime by expressly stating in the opening statement of Article 11 that the persons therein mentioned "do not incur any criminal liability."

2. **Exempting Circumstances.** (Non-imputability) Those grounds for exemption from punishment because there is no wanting in the agent of the crime any of the conditions which make the act voluntary or negligent.

   Based on the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.

3. **Mitigating Circumstances.** Those, which if present in the commission of a crime, do not entirely free the actor from criminal liability, but serve only to reduce the penalty.

   Based on the diminution of either freedom of action, intelligence, or intent, or on the lesser perversity of the offender.

4. **Aggravating Circumstances.** Those which, if attendant in the commission of the crime, serve to increase the penalty without, however, exceeding the maximum of the penalty provided by law for the offense.

   Based on the greater perversity of the offender manifested in the commission of the felony.

5. **Alternative Circumstances.**

IMPUTABILITY. The quality by which an act may be ascribed to a person as its author or owner; implies that the act committed has been freely and consciously done and may, therefore, be put down to the doer as his very own

RESPONSIBILITY. The obligation of suffering the consequences of crime

GUILT. An element of responsibility; a man cannot be made to answer for the consequences of a crime unless he is guilty.

JUSTIFYING CIRCUMSTANCES

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

1. **Anyone who acts in defense of his person or rights, provided that the following circumstances concur;**

   First. Unlawful aggression.

   Second. Reasonable necessity of the means employed to prevent or repel it.

   Third. Lack of sufficient provocation on the part of the person defending himself.

2. **Any one who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.**

3. **Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.**

4. **Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;**

   First. That the evil sought to be avoided actually exists;

   Second. That the injury feared be greater than that done to avoid it;

   Third. That there be no other practical and less harmful means of preventing it.

5. **Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.**

6. **Any person who acts in obedience to an order issued by a superior for some lawful purpose.**

JUSTIFYING CIRCUMSTANCES. Those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability.

►The burden of proof lies with the accused/ with the person invoking self-defense

- It is incumbent upon the accused to prove the justifying circumstances claimed by him to the satisfaction of the court
- Accused must rely on the strength of his own evidence, not on the weakness of the prosecution; even if prosecution is weak, the accused already admitted to the crime
- Accused must present "clear and convincing evidence"

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►Self-Defense includes the following rights
a. Right to life
b. Right to property
c. Right to honor

REASONS FOR ALLOWING SELF-DEFENSE
1. Classicist: The State cannot in all cases prevent aggression against its citizens and offer protection to the person unjustly attacked; It is inconceivable for the State to require that the innocent to succumb to an unlawful aggression without resistance
2. Positivist: lawful defense is an exercise of right, an act of social justice done to repel the attack of the aggression

JUSTIFYING CIRCUMSTANCES
1. **Self-defense**
2. **Defense of Relatives**
3. **Defense of a Stranger**
4. **Avoidance of a Greater Evil or Injury**
5. **Acts in the Fulfillment of Duty or in the Lawful Exercise of a Right or Office**
6. **Acts in Obedience to an Lawful Order**

1. ACTS IN DEFENSE OF HIS PERSONS OR RIGHTS

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself.

RIGHTS INCLUDED IN SELF DEFENSE
- defense of the person or body
- defense of his rights protected by law (e.g. right to property, right to honor)

REASON WHY SELF DEFENSE IS LAWFUL
- Justified by man's natural instinct to protect, repel and save his person from impending danger and peril
- **Classicists:** It is impossible for the State in all cases to prevent aggression upon its citizens and offer protection to the unjustly attacked, therefore it is inconceivable for the State to require the innocent to succumb to an unlawful aggression without offering any resistance
- **Positivists:** lawful defense is an exercise of right, an act of social justice done to repel the attack of an aggression

REQUISITES, SELF-DEFENSE
1. **UNLAWFUL AGGRESSION**
2. **REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL IT**
3. **LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON DEFENDING HIMSELF**

1. **UNLAWFUL AGGRESSION**
   - Unlawful aggression is an indispensable requisite, hence, its presence is a **condition sine qua non**
   - There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent

REQUISITES, UNLAWFUL AGGRESSION

a. **There is peril to one's life, limb or right**

1) **ACTUAL.**
   - **Equivalent to Physical Assault**; The person defending himself must have been attacked with actual physical force with the actual use of **weapon**

2) **IMMINENT.**
   - **Threatened assault of an immediate and imminent kind** which is offensive and positively strong, showing the wrongful intent to cause injury;
   - not required that the attack already begins for defense might be too late

►**RETALIATION** is not self-defense; in retaliation, the aggression that was began by the injured party already ceased to exist when the accused attacked him; while in self-defense, the aggression was still existing when the aggressor was injured or disabled by the person making the defense

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b. Must be simultaneous/ succeeding with the actual/imminent danger; **without appreciable interval of time**
   - When there is no time nor occasion for the accused for deliberation or cool thinking because it was imperative for him to act on the spot.

c. It must **come from the person who was attacked by the accused/ person claiming self-defense**; and

d. **Not merely threats or threatening stance or posture**; Mere belief in and impending attack is not sufficient
   - Must be offensive and positively strong
   - Mere threatening or intimidating attitude is not sufficient
   - Must be real and not imaginary
   - *e.g. unlawful aggression*
     1) when one aims a revolver at another with intention of shooting him
     2) the act of opening a knife and making a motion as if to make an attack
     3) placing hand in his pocket with motion indicating purpose to commit an assault with weapon
     4) when intent to attack is manifest, picking up a weapon is sufficient unlawful aggression
     5) a person who pursues another without raising hand to discharge blow; it is not necessary to wait until the blow is discharged

- There is no such peril to life, limb or right when there is no unlawful aggression
- there must be actual physical blows or actual use of weapon
- e.g. Peril to limb
  a. fist blow
  b. slap in the face, since the face represents person and his dignity

EXCEPTIONS, NOT LAWFUL AGGRESSION

1. When a person is exercising **lawful aggression** against you, you do not have the right to self-defense

2. Fulfilment of a duty (NCC Article 19) in a violent manner
   ⇨ **Ultra Vires.** When acting beyond one's authority, it can be considered as unlawful aggression, e.g.
   a. Provincial Sheriff taking a property of sentimental value when the obligation is an indeterminate thing, and other of the genus could have been taken to satisfy the obligation
   b. Peace officer confiscating a fishing net without order from the court

3. Exercise of a right (NCC Article 19) in a violent manner, e.g.
   a. **NCC Article 429.** The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened physical invasion or usurpation of his property

   b. **RPC Article 248.** Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

   If he inflicts upon them physical injuries of any other kind, he shall be exempt from punishment.

   These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

COUNTER-ARGUMENT AGAINST SELF-DEFENSE, WRT TO UNLAWFUL AGGRESSION

1. Nature, character, location, and extent of wound of the accused allegedly inflicted by the injured party may belie claim of self-defense
   a. Accused exhibited a small scar 1 1/2 inches long; might had wounded himself in order to escape imprisonment ***(People v Mediavilla)***
   b. Victim sustained 21 wounds; location, number and seriousness of the stab wounds inflicted on the victim belie claim of self-defense ***(People v Batas)***
   c. Deceased suffered three stab wounds: two are fatal, one incised wound ***(People v Marciales)***
   d. Victim's wounds having a right-to-left direction could not have been inflicted by a right handed person in front of the victim with a bolo ***(People v Labis)***
   e. Deceased suffered 19 wounds ***((People v Panganiban)***
   f. Deceased was struck from behind or when the body was in a reclining position ***(People v Tolentino)***

      ⇨ The belief of the accused may be considered in existence of the unlawful aggression. e.g. If the accused believed that the gun was loaded even when in fact it isn't, his self-defense is valid
      a. The gun only has power ***(Lloyd's Report cited in US v Ah Chong)***
      b. The gun was just a toy gun **i(People v Boaral)**

2. Improbability of the decease being the aggressor belies the claim of self defense
   a. Unlikely for a sexagenarian would assault a 24-year-old armed with a gun and a bolo just because the latter refused to give him a pig ***(People v Diaz)***
   b. Hard to believe that 55 year-old man sick with ulcer would attack and continue hacking he accused after having been seriously injured and losing his right hand ***(People v Ardisa)***

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3. The fact that the accused declined to give any statement when he surrendered to a policeman is inconsistent with the plea of self-defense
   a. Accused did not mention self-defense right away to the police when he surrendered ***(People v Manansala)***
   b. Accused did not include the fact of self-defense in his confession ***(People v Dela Cruz)***

4. Physical facts/ evidence may determine whether the accused acted in self-defense
   a. In the testimony, the victim would have been hit in front. Evidence showed that the wounds were inflicted from behind. Not self-defense. ***(People v Dorico)***
   b. Victim sustained 13 gunshot wounds, his gun was still tucked in the waistband. Not self-defense. ***(People v Perez)***
   c. Prosecution claims otherwise but the direction and trajectory of the bullets would have been different had the victim been standing upright two or three meters to the left of the truck. Valid self-defense. ***(People v Aquino)***

5. When the aggressor flees, unlawful aggression no longer exists

   ►When the **AGGRESSOR RUNS AWAY**, unlawful aggression no longer exists
   ⇨ Exception. If it is clear that the purpose of the aggressor in retreating is to take a more advantageous position to insure the success of the attack already began by him, the unlawful aggression is considered still continuing

6. There is no unlawful aggression when there is agreement to fight.

   ►There is no unlawful aggression when there is an **AGREEMENT TO FIGHT**;
   ⇨ Exceptions; Challenge to Fight
   a. Challenge to fight must be accepted; if challenge was not accepted, there is unlawful aggression
   b. An aggression ahead of the stipulated time and place is unlawful

7. One who voluntarily joined a fight cannot claim self-defense

8. Flight after the commission of the crime is highly evidentiary of guilt ***(People v Maranan)***

STAND GROUND WHEN IN RIGHT v RETREAT TO THE WALL
- The accepted rule now is **stand your ground when in the right**
- Where the accused is where he has the right to be, the law does not require him to retreat when his assailant is rapidly advancing upon him with a deadly weapon
- If one flees from an aggressor, he runs the risk of being attacked in the back by the aggressor

DETERMINING THE UNLAWFUL AGGRESSOR
- In the absence of direct evidence, it shall be presumed that the person who was deeply offended by the insult is the one who struck first ***(US v Laurel)***
- One with greater motive for committing the crime

DEFENSE OF OTHER RIGHTS

a. **Defense of Right to Chastity**
   - Attempt to rape is an unlawful aggression
   - Actions with the purpose of raping: embracing, touching private parts, throwing her to the ground, done in the dark and attempt was imminent; stabbing was considered self-defense ***(People v Dela Cruz)***
   - Placing of hand on the woman's upper thigh done in broad day light and has no change of committing rape justify physical attacks but not murder ***(People v Jaurigue)***

b. **Defense of Property**
   - **NCC Article 429.** The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property
   - To be available in prosecutions for murder or homicide, must be coupled with an attack on the person of one entrusted with the said property. An attack on the person defending his property is an indispensable element. ***(People v Narvaez)***

c. **Defense of Home**
   - The violent entry of another to another's house was considered unlawful aggression in itself; attack on the owner of the house was not necessary ***(People v Mirabiles)***
   - Accused is not required to retreat and he may even pursue his adversary until he has secured himself from danger; but killing is not easily justified. There is not necessity to kill for attempted arson. ***(US v Rivera)***

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2. **REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL IT**
   - Presupposes the existence of unlawful aggression
   - The law protects not only the person who **repels** an **actual** aggression, but even the person to tries to **prevent** an expected or **imminent** aggression.
   - Perfect equality between the weapon used by the one defending himself and that of the aggressor is not required; what the law requires is **Rational Equivalence**

   - **REQUISITES, REASONABLE NECESSITY**
     1. Necessity of the course of action taken by the person making a defense, and
     2. Necessity of the means used
     3. Both of which must be reasonable

   NECESSITY OF THE COURSE OF ACTION TAKEN
   - **Reasonableness of the necessity depends upon the circumstances**
     a. That the accused did not select a lesser vital potion of the body of the deceased to hit is reasonably expected; the accused has to move fast or in split seconds. ***(People v Ocaña)***
     b. The necessity of the course of action taken depends on the existence of unlawful aggression. No unlawful aggression, or if has ceased to exist, there would be no necessity to take course of action as there is nothing to prevent or repel.
     c. Place and occasion of the assault considered.
     d. The darkness of the night and the surprise which characterized the assault is considered

   - **FACTORS TO CONSIDER**
     a. Presence of imminent danger
     b. Impelled by the instinct of self-preservation
     c. Nature and quality of the weapon used by the accused compared to the weapon of the aggression
     d. Emergency to which the person defensing himself has been exposed to
     e. Size and/or physical character of the aggressor compared to the accused and other circumstances that can be considered showing disparity between aggressor and accused
     f. The place and occasion of the assault

   - **NO NECESSITY OF THE COURSE OF ACTION TAKEN, EXAMPLES**
     a. ***People v Alconga.*** When the attacker ran away
     b. ***People v Calavagan.*** When the danger or risk has disappeared, his stabbing the aggressor while defending himself should have stopped
     c. ***People v Masangkay***. The victim was successfully disarmed of a piece of wood, and was stabbed with such frequency, frenzy and force
        People v Alviar. Accused succeeded in snatching the weapon and the victim already manifested refusal to fight
        ⇨ Wife was disarmed by husband but the wife struggled to gain possession of the bolo; husband was already losing strength due to loss of blood ***(People b Rabandaban)***
     d. ***US v Rivera.*** Victim who attempted to burn the house was already outside and prostate on the ground having been hit with a bolo by accused, no need to kill victim
     e. ***US v Pasca.*** Victim did no draw his bolo and only attempted to push the accused to the shallow pool into which he had been thrown at, accused was not justified at striking at victims head with a bamboo pole
     f. ***People v Narvaez.*** Accused fired his shotgun killing the two victims who chiseled the walls of the accused house and closed entrance and exit to the highway

   - When minor injuries were inflicted after the unlawful aggression ceased to exist does not affect the benefit of self-defense when the mortal wounds were inflicted at the time the requisites of self-defense were present ***(People v Del Pilar)***
     ⇨ **Does not apply:** when minor wounds were inflicted by accused at first, and the attacker/victim dropped his weapon and refused to fight but the accused still attacked him to death

   - **The person defending is not expected to control his blow**
     a. ***Brownell v People.*** One is no required to draw fine distinctions as to the extent of the injury which assailant might inflict upon him
     b. ***People v Espina.*** Two blows or failing to inflict a lesser blow would not negate self-defense; in the heat of the encounter, the accused was not in a position to reflect coolly or to wait after each blow to determine the effects
     c. ***US v Domen.*** Accused cannot be expected to aim at a less vulnerable part of the victim when using a gun to defend himself

   - The measure of rational necessity is to be founds in the situation **as it appeared to the person defending at the time when the blow was struck *(Cano v People)***

   - **The one defending must aim at his assailant and not indiscriminately. *(People v Galacgac)***

   NECESSITY OF THE MEANS USED
   - The means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression

   - **NO RATIONAL NECESSITY OF THE MEANS EMPLOYED**
     a. ***US v Apego.*** Woman awakened by bother-in-law grasping her arm but did not perform any other act that can be construed as an act against her honor was not justified to kill him with a knife
     b. ***People v Montalbo.*** No reasonable necessity to use a dagger against attacker inflicting fist blows only
     c. ***People v Jaurigue.*** Killing a man with a knife was excessive when he only placed his hand in the upper thigh of a woman seated inside a chapel

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- **TEST OF REASONABLENESS OF THE MEANS USED.**
  1. **Perfect equality between the weapon used by the one defending himself and that of the aggressor is not required,** because the person assaulted does not have sufficient tranquility of mind to think, to calculate and to choose which weapon to use.
     a. **Knife/ Dagger v Club.** General rule, a dagger or knife is more dangerous than a club
        ⇨ ***People v Padua.*** Use of knife/dagger vs club is deemed reasonable if it **cannot** be shown that
           1) Person assaulted had other available means, and
           2) If there was other means, he could coolly choose the less deadly weapon to repel the assault

     b. **Firearm v Dagger/Knife.** No difference, use of gun against a knife is a reasonable means to ward off attack ***(Lacson v CA)***; subject to the limitations in *People v Padua*

     c. **Pocketknife v Cane.** Reasonable ***(US v Laurel)***
     d. **Gun v Bolo.** Reasonable ***(US v Mack)***
     e. **Bolo/Knife v Rod/Stick.** Reasonable ***(People v Romero)***

     f. **Bayonet v Cane.** Not Reasonable. Drawing bayonet was enough to prevent further attack; stabbing victim with bayonet was beyond necessary. ***(People v Oñas)***

     g. **Fist blows.** Must be repelled with fist blows also. ***(People v Montalbo)*** *applies only when the aggressor and defender are of the same size and strength

  2. **Physical condition, character and size.**
     a. ***People v Igancio.*** Middle age man was justified in using a knife when cornered on his back by 3/4 bigger and stronger men striking him with fists
     b. ***People v Sumicad.*** Killing the aggressor with a bolo was justified, when the aggressor who attacked only with fist was a bully, larger and stronger man known for his violent character; after a warning and a cut on the shoulder, aggressor continued to attempt to possess the bolo
     c. ***People v Padua.*** Striking with a bolo on the forehead and on the right eye was justified when the aggressor who provoked the incident is of violent temperament, troublesome, strong and aggressive with three criminal records

  3. **Other circumstances considered.**
     a. ***US v Batngbacal.*** In view of the imminence of the danger, a shotgun was a reasonable means to prevent an aggression with a bolo.

- Reasonable necessity of means employed to prevent or repel unlawful aggression is to be **liberally construed in favor of law-abiding citizens**. ***(People v So)***

- **The duty of a peace officer requires him to overcome his opponent.** Police officer is not required to afford a person attacking him the opportunity for a fair and equal struggle. Even if equipped with a club, he may still use his revolve/gun. ***(US v Mojica)***
  ⇨ ***US v Mendoza.*** It was not reasonably necessary for a policeman to kill his assailant to repel an attack with a calicut.

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3. **LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON DEFENDING HIMSELF**
   a. When the person defending himself from the attack by another gave sufficient provocation to the latter, the former is also to be blamed for having given the cause of the aggression

   b. **CASES, LACK OF SUFFICIENT PROVOCATION**
      1) **When no provocation at all was given to the aggressor by the person defending himself**

      2) **When, even if a provocation was given, it was not sufficient**
         - ***People v Alconga.*** Provocation must be sufficient, which means that it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission
         - Verbal argument cannot be considered sufficient provocation.
         - **EXAMPLES, WHEN PROVACATION IS SUFFICENT**
            a) ***US v McCray.*** When one challenges the deceased to come out of the house and engage in a fist fight with him and prove who is he better man
            b) ***People v Sotelo.*** When one hurls insults or vulgar language
               ⇨ ***People v Sanchez.*** When response to a question might have hurt the pride of the accused, not sufficient
            c) ***People v Getida.*** When the accused tried to forcibly kiss the sister of the deceased

      3) **When, even if the provocation was sufficient, it was not given by the person defending himself, or**
         - ***People v Balansang.*** Third requisite not present because the provocation was not given by the accused but by another person
         - Lack of sufficient provocation refers exclusively to the person defending himself; does not apply to the aggressor

      4) **When, even if the person defensing himself gave a provocation, it was not proximate and immediate to the act of aggression**
         - ***US v Laurel.*** Kissing the girlfriend of the aggressor was sufficient provocation, but since it took place two days before the aggression, it was disregarded

BATTERED WOMAN SYNDROME.
- Refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse (RA 9262, Sec3)

- **REQUISITES**
  1. That the battering husband, with whom he battered wife has a marital, sexual or dating relationship, inflicted physical harm upon her
  2. That the infliction of physical harm must be cumulative
  3. The cumulative abuse results to physical and psychological or emotional destress to the woman

- **RA 9262 (Anti-Violence Against Women and their Children Act of 2004) SECTION 26.** *Battered Woman Syndrome as a Defense. – Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.*

  In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists.

- **BATTERED WOMAN.**
  a. A woman who is repeatedly subject to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights.
  b. Wife or woman in any form of intimate relationship with men
  c. The couple must go through the battering cycle at least twice

- **CYCLE OF VIOLENCE**
  1. **Tension-building phase.** Minor battering occurs; verbal or slight physical abuse or another form of hostile behavior
     - woman tries to pacify the batterer through a show of kind, nurturing behavior, or simply by staying out of his way
     - her placatory and passive behavior legitimizes the belief that he has the right to abuse her
     - the woman withdraws emotionally; the more she becomes emotionally unavailable, the more the batterer becomes angry, oppressive and abusive

  2. **Acute battering incident**
     - Characterized by brutality, destructiveness and sometimes, death
     - woman has no control , only the batterer may put an end to the violence
     - woman has a sense of detachment from the attack and the terrible pain

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although she may later clearly remember every detail

3. **Tranquil, loving (or non-violent) phase**
   - Begins when the battering incident ends
   - Couple experiences profound relief
   - Batterer shows tender and nurturing behavior towards his partner; he knows that he had been cruel and he make-up for it
   - Battered woman convinces herself that the battery will never happen again, that her partner will change

2. ACTS IN DEFENSE OF THE PERSON OR RIGHTS OF HIS RELATIVES

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

2. Any one who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

RELATIVES THAT CAN BE DEFENDED

1. **Spouse**
2. **Ascendants**
3. **Descendants**
4. **Legitimate, natural or adopted brothers and sisters, or relatives by affinity in the same degrees**
   - *The relationship by affinity between the surviving spouse and blood relatives of deceased spouse survives the death of either party to the marriage which created such affinity.*
5. **Relatives by consanguinity within the fourth civil degree**

Degree	Includes (Consanguinity)
First	Parents
Second	Brothers, sisters
Third	Uncle, aunt, niece, nephew
Fourth	First cousins

JUSTIFICATION

- Founded not only upon humanitarian sentiment but also upon the impulse of blood which impels men to rush, on the occasion of great perils, to the rescue of those close to them by ties of blood

REQUISITES, DEFENSE OF RELATIVE

1. **Unlawful aggression**
2. **Reasonable necessity of the means employed to prevent or repel it**
3. **IN CASE THE PROVOCATON WAS GIVEN BY THE PERSON ATTACKED, THE ONE MAKING A DEFENSE HAD NO PART THEREIN**

1. UNLAWFUL AGGRESSION

- Unlawful aggression is a condition *sine qua non*, without it any defense if not possible of justified
  a. ***People v Moro Munabe.*** When two persons are getting ready to strike at each other, a relative who butts in and administers a deadly blow on the other to prevent him from harming relative is guilty of homicide
  b. ***People v Panuril.*** Decease and his brother were facing each other in a fight, each holding a weapon. Accused hit the deceased causing his death. If accused is the aggressor, he cannot invoke defense of relative.

- Unlawful aggression can be made to depend upon the honest belief of the one making a defense
  a. When A was the unlawful aggressor against B, and then the sons of A killed B believing in good faith that A/father is the victim and B is the unlawful aggressor, the killing is justified.
  b. ***Olbinar v CA.*** Believing that her husband was her victim of an unlawful aggression by two

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men who had already beaten him up, the wife was justified in using a *bolo* to stop the assault.

2. REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL IT

- The gauge of reasonable necessity of the means employed to repel the aggression is to be found in the situation as it appears to the person preventing the aggression/ making the defense. ***(Eslabon v People)***

3. IN CASE THE PROVOCATION WAS GIVEN BY THE PERSON ATTACKED, THE ONE MAKING A DEFENSE HAD NO PART THEREIN

- **The fact that the relative defended gave provocation is immaterial**
- There is still a legitimate defense of relative even if the relative being defended has given provocation, ***provided*** that the one defending such relative has no part in the provocation.
- Even if the one defending a relative is induced by revenge or hatred, as long as the three requisites of defense of relatives are present, it will still be a legitimate defense

EXAMPLES, DEFENSE OF RELATIVE

a. ***People v Ammalun.*** Accused heard his wife shouting for help. He rushed into the house and saw deceased on top of his wife. He drew his bolo and hacked deceased at the case of his neck while deceased was forcibly abusing his wife

b. ***US v Rivera.*** Rivera challenged deceased. Deceased picked-up a bolo and chased Rivera. Upon overtaking him, deceased inflicted tow wounds. Rivera's father disarmed deceased using a cane. The father was justified in disarming the deceased even if the son gave provocation, but was guilty of homicide after inflicting fata wounds to deceased.

3. ACTS IN DEFENSE OF THE PERSON OR RIGHTS OF A STRANGER

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

PERSONS COVERED

- Any person no included in the enumeration of relatives in paragraph 2

JUSTIFICATION

- What one may do in his defense, another may do it for him
- The ordinary man would not stand idly by and see his companion killed without attempting to save his life

REQUISITES, DEFENSE OF STRANGER

1. **Unlawful aggression**
2. **Reasonable necessity of the means employed to prevent or repel it**
   - ***US v Subingsubing.*** Furnishing a weapon to one in serious danger is considered defense of a stranger.
3. **THE PERSON DEFENDING BE NOT INDUCED BY REVENGE, RESENTMENT, OR OTHER EVIL MOTIVE**
   - The stranger must be actuated by a **disinterested or generous motive**, not by revenge, resentment or other evil motive
   - Even if a person has a standing grudge against the assailant, if he enters upon the defense of a stranger out of generous motive to save the stranger from harm or death, the third requisite is still present

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4. AVOIDANCE OF GREATER EVIL OR INJURY

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present;

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

COVERAGE, "damage to another"

1. injury to persons
2. damage to property

REQUISITES, AVOIDANCE OF A GREATER EVIL OR INJURY

1. **That the evil sought to be avoided actually exists**
2. **That the injury feared be greater than that done to avoid it**
3. **That there be no other practical and less harmful means of preventing it**

1. That the evil sought to be avoided actually exists

- The evil must actually exist
- Par 4 does not apply if evil is merely expected or anticipated or may happen in the future

2. That the injury feared be greater than that done to avoid it

- One's own safety is of greater importance than of another, *self-preservation*
- The greater evil should not be brought about by the negligence or imprudence of the actor
- When accused was not avoiding any evil, he cannot invoke the justifying circumstance of avoidance of greater evil or injury
  a. ***People v Ricohermoso.*** A and B attacked X, father. Before Y, son, can defend his father using a gun, C grappled with him killing Y. C contended invoked avoidance of greater evil since Y would have shoot A and B. **Held:** The act of C against Y was designed to insure the killing of X without risk to A and B, C was no avoiding aby greater evil. Moreover, defense of his father is not an evil that could be justifiably prevented.

- **EXAMPLES, DAMAGE TO PROPERTY UNDER PAR 4**
  a. When a fire broke-out in a cluster of nipa houses, in order to prevent the spread to adjacent houses, the surrounding nipa houses were pulled down.
  b. ***Tan v Standard Vacuum Oil.*** A gasoline truck caught fire while delivering to a gas station. To prevent the gasoline station from catching fire, the bus was driven to the middle of the street and was abandoned, but it continued to move crashing and burning a house at the other side of the street.
  c. During the storm, the captain ordered part of the goods be thrown overboard to prevent he ship from sinking.

3. That there be no other practical and less harmful means of preventing it

- The evil which brought about the greater evil must not result from a violation of law by the actor.
- There is no civil liability in justifying circumstances, ***except*** in paragraph 4 of Article 11. **The civil liability is borne by the persons benefitted.**

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5. ACTS IN THE FULFILLMENT OF A DUTY OR IN THE LAWFUL EXERCISE OF A RIGHT OR OFFICE

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

REQUISITES

1. **That the Accused acted in the PERFORMANCE OF A DUTY or in the LAWFUL EXERCISE OF A RIGHT OR OFFICE**
2. **That the injury caused or the offense committed be the NECESSARY CONSEQUENCE of the due performance of duty or the lawful exercised of such right or office**

- ***People v Oanis.*** First requisite was present because accused peace officers trying to get a wanted criminal were acting in performance of a duty. Second requisite was absent since they exceeded in the fulfillment of their duty when they killed a sleeping person without making any previous inquiry as to the identity of victim.
- ***People v Filipe Delima.*** A policeman who fired at a fugitive equipped with a bamboo in the shape of a lance who refused to surrender, although the shot proved to be fatal, was justified.

- **A guard is justified from shootin to an escaping prisoner.**
  a. ***Valcorza v People.*** Deceased was imprisoned because of a relatively minor offense of stealing a chicken. He attempted to escape from prison and in the attempt, assaulted a policeman. Policeman directly fired at him while he was jumping to another part of the creek and the distance between them widening. Prisoner was shot to death at the back. The shooting was justified.
  b. ***People v Lagata.*** A guard is justified in shooting a prisoner who is trying to escape.
  c. ***US v Magno.*** Constabulary soldiers who shot escaping prisoner to death when he disregarded warnings were not criminally liable.

- **Shooting an offender who refused to surrender is justified.**
  a. **People v Gayrama.** Accused slashed the municipal president on his arm with a bolo, ran away and refused to be arrested. The Chief of police would have been justified to shoot the accused.
  b. ***US v Bertucio.*** Peace officers may arrest violators even without a warrant of arrest if the violation is committed in their own presence, or for the purpose of preventing a crime about to be consummated.

     ⇨ **Shooting a thief who refused to be arrested is not justified.**

     People v Bentres. Security guard was guilty of homicide after he shoot a thief who had stolen from the mining company. Guard exceeded the fulfillment of his duty.

- **A person protecting his possession of his property is justified from injuring (not seriously) the one trying to get it from him.**
  a. **NCC, Article 429.** The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

  b. **Unlawful aggression is not necessary;** if there is unlawful aggression against the person charged with the protection of the property, then paragraph 1/ defense of right to property applies

- **The actual invasion of property may consist of a mere disturbance of possession or of a real dispossession**
  a. If it is a mere disturbance of possession, force may be used against it an any time as long as it continues even beyond the prescriptive period for an action of forcible entry
  b. If the invasions consists of a real dispossession, force to regain possession can be used only immediately after the dispossession
  c. If the property is immovable, there should be no delay in the use of force to recover it; a delay, even if excusable, will bar the right of use of force

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6. ACTS IN OBEDIENCE TO AN ORDER ISSUED BY A SUPERIOR FOR SOME LAWFUL PURPOSE

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

REQUISITES, OBEDIENCE TO AN ORDER

1. **That an order has been issued by a SUPERIOR**
2. **That such order must be for some LAWFUL PURPOSE**
3. **That the means used by the subordinate to carry out said order is LAWFUL**

- Both the person who gives the order and the person who executes is must be action within the limitations prescribed by law

- **When the order is not for a lawful purpose, the subordinate who obeyed it is criminally liable**
  a. ***People v Barroga.*** One who prepared a falsified document with full knowledge of falsity is not excused even if he merely acted in obedience to the instruction of his superior. The instruction was not for a lawful purpose.
  b. ***People v Margen.*** A soldier who obeyed the order of his sergeant to torture to death the deceased is criminally liable.

- **The subordinate is not liable for carrying out an illegal order of his superior if he is not aware of the illegality of the order and he is not negligent**

	SELF-DEFENSE	DEFENSE OF RELATIVES	DEFENSE OF STARNGERS	IN AVOIDANCE OF A GREATER EVIL OR INJURY	IN FULFILLMENT OF A DUTY OR LAWFUL EXERCISE OF RIGHT OR OFFICE	IN OBEDIENCE OF A LAWFUL ORDER
BASIS	**Article 11 Paragraph 1**	**Article 11 Paragraph 2**	**Article 11 Paragraph 3**	**Article 11 Paragraph 4**	**Article 11 Paragraph 5**	**Article 11 Paragraph 6**
REQUISITES	1. Unlawful Aggression; 2. Reasonable Necessity of the means employed to prevent or repel it; 3. Lack of sufficient provocation on the part of the person defending himself	1. Unlawful Aggression; 2. Reasonable Necessity of the means employed to prevent or repel it; 3. In case if provocation was given by the person attacked, the one making the defense had no part therein	1. Unlawful Aggression; 2. Reasonable Necessity of the means employed to prevent or repel it; 3. The person defending be not induced by revenge, resentment, or other evil motive	1. Evil sought to be avoided actually exists; 2. Injury feared be greater than that done to avoid it; 3. There is no other practical and less harmful means of preventing it	1. The accused acted in the performance of a duty or in the lawful exercise of a right or office; 2. That the injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office	1. That the order has been issued by a superior; 2. That such order must be for some lawful purpose; 3. That the means used by the subordinate to carry out sad order is lawful.
SCOPE/ OTHER NOTES	1. Defense of Person 2. Defense of Rights 3. Defense of Property 4. Defense of Honor	1. Spouse – Legitimate 2. Ascendants – father, mother, grandparents, great grandparents in direct line 3. Descendants – children, grandchildren, great grandchildren in direct line 4. Brothers and Sisters – legitimate, natural or adopted 5. Relatives by affinity in the same degree 6. Relatives by consanguinity within the fourth civil degree	Strangers are any person not included in the enumeration of relatives in par 2			

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EXEMPTING CIRCUMSTANCES

ARTICLE 12. Circumstances which exempt from criminal liability. - the following are exempt from criminal liability:

1. **An imbecile or an insane person, unless the latter has acted during a lucid interval.**

   When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

2. **A person under nine years of age.**

3. **A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Art. 80 of this Code.**

   When such minor is adjudged to be criminally irresponsible, the court, in conformably with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education otherwise, he shall be committed to the care of some institution or person mentioned in said Art. 80.

4. **Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.**

5. **Any person who act under the compulsion of irresistible force.**

6. **Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.**

7. **Any person who fails to perform an act required by law, when prevented by some lawful insuperable cause.**

EXEMPTING CIRUMSTANCES. (Non-immutability) those grounds for exemption from punishment because there is wanting in the agent of the crime any of the conditions which make the act voluntary or negligent.

- The exemption from punishment is based on the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.

- RPC: A person must act with malice (dolo) or negligence (culpa) to be criminally liable.
  a. Without intelligence, freedom of action or intent, one does not act with malice
  b. Without intelligence, freedom of action or fault, one does not act with negligence

- **There is a crime committed but not criminal liability arises.**

►Exempting circumstance is a matter of defense to be proved by the defendant to the satisfaction of the court.

►In all the exempting circumstances, intent is wanting in the agent of the crime.

a. Paragraphs 1, 2, and 3 (imbecile, insane, minor) – **No intelligence, hence no intent**
b. Paragraph 4 – **specifically states that actor causes injury by mere accident without intention of causing it**
c. Paragraphs 5 and 6 – **no freedom of action, hence, no intent**

JUSTIFYING CIRCUMSTANCES v EXEMPTING CIRCUMSTANCES

JUSTIFYING CIRCUMSTANCE	EXEMPTING CIRCUMSTANCE
No crime Act is justified	**There is crime** Act not justified
No criminal liability	No criminal liability
No civil liability except in par 4	There is civil liability except in par 4 and 7

EXEMPTING CIRUCMSTANCES

1. **IMBECILITY OR INSANITY**
2. **MINORITY**
3. **ACCIDENT WITHOUT FAULT OR INTENTION CAUSING IT**
4. **ACTING UNDER COMPULSION OF AN IRRESISTIBLE FORCE**
5. **ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR**
6. **INSUPERABLE OR LAWFUL CAUSES**

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1. IMBECILITY OR INSANITY

ARTICLE 12. Circumstances which exempt from criminal liability. - the following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

BASIS. **Complete absence of intelligence**, an element of voluntariness.

IMBECILITY V INSANITY

IMBECILILITY	INSANITY
Exempt in all cases from criminal liability	Insane is not so exempt if it can be show that he acted during a lucid interval
Advanced in aged but has a mental development comparable to a 2-7 year-old child Deprived completely of reason or discernment and freedom of the will at the time of committing the crime	Acts with intelligence during lucid interval

- Mere abnormality of mental faculties is not enough, especially if offender has not lost consciousness of his acts.

PROCEDURE WHEN IMBECILE/INSANE COMMITS A FELONY

1. Court orders his confinement in a hospital/asylums established for persons afflicted
2. Person afflicted shall not be permitted to leave without permission of the court
   - ⇨ ***Chin Ah Foo v Conception.*** Court has no power to permit an insane person to leave the asylum without first obtaining opinion of the Director of Health that he may be released without danger.

►The defense must prove that the accused was insane at the time of the commission of the crime. Presumption is always in favor of sanity.

- To ascertain the person's mental condition at the time of the act, it is permissible to receive evidence of the condition of his mind during a reasonable period both before and afterthat time.
- Direct testimony is not required.
- Mind can be known only by outward acts. The thoughts, the motives and the emotions of a person are read to determine whether his acts conform to the practice of people of sound mind.
- Circumstantial evidence, if clear and convincing, will suffice to prove insanity. ***(People v Bonoan)***

INSANITY AT THE TIME OF COMMISSION V
INSANITY AT THE TIME OF THE TRIAL (SANE DURING COMMISSION)

AT THE TIME OF COMMISSION	AT THE TIME OF TRIAL
Exempt from criminal liability	Criminally liable
	Trial will be suspended until mental capacity of the accused be restored to afford him a fair trial

►When it is shown that defendant had lucid intervals, it will be presumed that the offense was committed in one of them. But a person who has been adjudged insane, or who has been committed to a hospital or to an asylum for the insane is presumed to continue to be insane.

INCLUDED IN INSANITY	NOT INCLUDED
- Schizophrenia or Dementia praecox (irresistible homicidal impulse) - Epilepsy - Somnabulism - Malignant Malaria	- Kleptomania - Feeblemindedness - Pedophilia

►**Dementia praecox** (irresistible homicidal impulse), now called **Schizophrenia**, is covered by the term insanity.

►On **Kleptomania**: If the mental defect deprived him of consciousness of his acts, considered insane and exempting. If it only diminished but did not deprive him of consciousness of his acts, it is only a mitigating circumstance.

►On **Epilepsy**: Epilepsy may be covered by the term insanity.
- ⇨ ***People v Mancao.*** Accused was an epileptic but it was not proved that he was under influence of an epileptic fit when he committed the offense, he is not exempt.

►**Feeblemindedness** is not imbecility. It is not exempting because offender could distinguish right from wrong.

►**Pedophilia** is not insanity. Person afflicted could distinguish between right and wrong.

►**Amnesia** is not proof of mental condition of the accused. Failure to remember is in itself no proof for the mental condition of the accused when the crime was performed. ***(People v Tabugoca)***

►**Somnambulism/ Sleepwalking** is embraced in the plea of insanity. ***(People v Gimena)*** The act of the person is not voluntary when he does not have intelligence and intent while doing the act.
- ⇨ **Hypnotism.** Still debatable.

►**Chronic Malaria** affects the nervous system and among such complication is aute melancholia and insanity. ***(People v Lacena)***

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2. MINORITY

ARTICLE 12. Circumstances which exempt from criminal liability. - the following are exempt from criminal liability:

2. A person under nine years of age.

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Art. 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformably with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education otherwise, he shall be committed to the care of some institution or person mentioned in said Art. 80.

RA 9344. JUVENILE JUSTICE AND WELFARE ACT.
SECTION 6. Minimum Age of Criminal Responsibility. – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

BASIS. Paragraphs 2 and 3 are both based on the **complete absence of intelligence**.

STAGE OF LIFE	AGE	LIABILITY
Age of Absolute irresponsibility (infancy)	15 y/o and under	Exempting circumstance
Age of Conditional responsibility	Over 15 but under 18 y/o	
	a. Acted **without** discernment	Exempting circumstance
Age of Mitigated responsibility	b. Acted **with** discernment	Privileged mitigating (penalty is reduced by degree lower than that imposed) Sentence suspended
Age of Full responsibility	18 y/o or over	Full criminal responsibility
Age of Mitigated responsibility (Senility)	70 y/o or over	Mitigating circumstance (no imposition of death penalty; if already imposed, execution of death penalty is suspended and commuted)

►**PRESUMPTION OF MINORITY.** Child in conflict with the law shall enjoy the presumption of minority, and shall enjoy all the rights of a CICL until proven to be 18 y/o or older at the time of the commission of the offense.

►**Minor is presumed to have acted without discernment.** Prosecution must prove that a 15-28 y/o has acted with discernment.

CHILD IN CONFLICT WITH THE LAW. A person who at the timeof the commission of the offense is below 18 years old but not less than 15 years and one day old.

DISCERNMENT. The capacity of the child at the time of the commission of the offense to understand the differences between right and wrong and the consequences of wrongful act.

- Determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act.
- **Discernment may be shown by**
  1. **Manner of Committing the Crime.**
     d. ***People v Magsino.*** When the minor committed the crime during nighttime to avoid detection or took the loot to another town to avoid discovery, he manifested discernment.

  2. **Conduct of the Offender**
     a. ***Madali v Peope.*** Minor punched the body and head of the victim with a brass knuckle around his fist. His cohorts hanged the victim's body to a nearby tree. They warned a witness not to reveal their act to anyone or else they will kill him.

DISCERNMENT V INTENT

DISCERNMENT	INTENT
Relates to the moral significance that a person ascribed the act	Refers to the desired act of the person

►A person may not **intend** to shoot another but may be **aware of the consequence** of his negligent act which may cause injury to the same person in negligently handing an air rifle.

►Burden to prove age is with the person alleging the age of the CICL. If age of the child is contested prior to filing of information in court, a case for determination of age under summary proceeding may be filed with the Family Court.

- **Determination of Age**
  1. Best evidence: an original or certified true copy of the certificate of live birth;
  2. Similar authentic documents
     a. baptismal certificates
     b. school records or
     c. any pertinent document that shows the date of birth of the child
  3. testimony of the child, testimony of a member of the family related to the child by affinity or consanguinity who is qualified to testify on matters respecting pedigree, testimony of other persons, the physical appearance of the child and other evidence

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3. ACCIDENT WITHOUT FAULT OR INTENTION CAUSING IT

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

BASIS. Lack of **negligence** and **intent**. Under this condition, a person does not commit either an intentional or culpable felony.

ELEMENTS

1. **A person is performing a lawful act**
   - ***People v Galacgac.*** Art 12 Par 4 cannot be invoked by accused who illegally discharged his firearm in a thickly populated place when it is prohibited and penalized by Art 155 of RPC
   - ***People v Vitug.*** Strking another with a gun in self-defense, even if it fires and seriously injured the assailant, is a lawful act. The injury was caused by accident.
   - ***People v Reyta.*** The act of drawing a weapon in the course of a quarrel, not being in self-defense, is unlawful (light thread, Art 285 RPC). Accident cannot be invoked as ground for exemption.

2. **With due care**
3. **He causes an injury to another by mere accident**
4. **Without fault or intention of causing it**
   - ***People v San Juan.*** Accident as exempting circumstance cannot be applied when accused is guilty of negligence.

ACCIDENT. Something that happens outside the sway of our will, and although it comes about through some act of our will, lies beyond the bounds of humanly foreseeable consequences.

- **Accident presupposes the lack of intention to commit the wrong done.**
- **Accident and negligence are intrinsically contradictory, once cannot exist with the other.**

⇨ If the consequences are plainly foreseeable, it will be a case of **negligence**.

a. ***People v Nocum.*** Accused tried to stop two person fighting by shooting twice in the air. The bout continued so he fired another shot at the ground. The bullet ricocheted and killed a bystander. He is guilty of homicide. He willfully discharged his gun without taking the precautions, the district was populated and the likelihood that the bullet would glance over the pavement.

EXAMPLES, ACCIDENT

b. ***US v Tañedo.*** Accused shot a wild chicken, but the slug recoiled, and struck and killed a tenant. The tenant was not in the direction at which the accused fired his gun. It was not foreseeable that the slug would recoil after hitting the wild chicken. There is no criminal liability.

c. ***US v Tayontong.*** A chauffer ran over a man who suddenly and unexpectedly crossed the street because it was physically impossible to avoid hitting him. Chauffer was driving on the proper side of the road at a moderate speed. He was not criminally liable.

d. ***People v Ayaya.*** When the husband was about to push the door and crush the head of the son, the wife jabbed the husband with the point of the umbrella to prevent him from crushing the son's head. Husband's injury was a mere accident.

NON-EXAMPLES, ACCIDENT NOT APPRECIATED

a. ***People v Taylaran.*** Repeated blows negate the claim of wounding by mere accident.

b. ***People v Reyes.*** Accidental shooting is negated by threatening words preceding it and still aiming the gun at the prostrate body of the victim, instead of immediately helping him.

4. ACTING UNDER COMPULSION OF AN IRRESISTIBLE FORCE

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

1. Any person who act under the compulsion of irresistible force.

BASIS. Complete absence of freedom.

►Presupposes that a person is compelled **by means of force or violence** to commit a crime

ELEMENTS, ACTING UNDER THE COMPULSION OF AN IRRESISTABLE FORCE

1. **That the compulsion is by means of physical force**
2. **That the physical force must be irresistible**
3. **That the physical force must come from a third person**

- The force must be irresistible to reduce the actor to a mere instrument who acts not only without will but against his will.

- Duress, force, fear or intimidation must be present, imminent and impending and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done.

a. ***US v Caballeros.*** Accused was at the plantation gathering bananas. Upon hearing the shooting, he ran but was seen by the leader of the band. They called him and striking him with the butts of their guns, compelled him to bury the bodies. Accused acted under the compulsion of irresistible force.

b. ***People v Sarip.*** Accused, equipped with a rifle, claimed that he was threatened with a gun by the mastermind. There is no compulsion or irresistible force.

- **Irresistible force can never consist in an impulse or passion or obfuscation**. It must be of an extraneous force coming from a third person.

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5. ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

2. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

BASIS. Complete absence of freedom.
Actus me invito factus non est meus actus. *An act done by me against my will is not my act.*

►Presupposes that a person is compelled to commit a crime by another; the compulsion is **by means of intimidation or threat**, not force or violence.

ELEMENTS, ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR *(People v Petenia)*

1. **Existence of an uncontrollable fear**
2. **The fear must be real and imminent**
3. **The fear of an injury is greater than or at least equal to that committed**
4. **That if promises an evil of such gravity and imminence that he ordinary man would have succumbed to it *(US v Elicanal)***

- ***US v Exaltacion.*** Accused were compelled under fear of death to swear allegiance to the Katipunan whose purpose was to overthrow the government by force of arms. Accused are not liable for rebellion because they joined under the impulse of uncontrollable fear of an equal or greater injury.

►**Duress** as a valid defense should be based on real, imminent or reasonable fear for one's life or limb, and should not speculative, fanciful or remote fear.

- A threat of future injury is not enough. Compulsion must leave no opportunity to the accused for escape or self-defense in equal combat.
- **EXCEPTION: Duress is unavailing where the accused had the opportunity**
  1. **to run away if he had wanted to or**
  2. **to resist any possible aggression because he was also armed.**

  a. ***People v Parulan.*** The accused had several opportunities to leave the gang that intimidated him into committing a crime to kidnap the victim. Defense that he acted under intimidation is untenable.
  b. ***People v Vargas.*** Accused was armed with a rifle, while the leader who threatened him to join the band was armed with a revolver only. He could have resisted the leader. Accused did not act under impulse of an uncontrollable fear.
  c. ***People v Rogado.*** Accused was armed with a carbine which he could use to protect himself from his superiors. Victim was brought to a secluded place away from the superior, accused could have escaped. Accused carried out the order to kill victim with a blow that almost severed the head from the body. He did not act under pressure of fear or force.
  d. ***People v Ragala.*** Under the comman of Hukbalahap, accused told his companions to dig a grave, and he also walked behind the Hukblahap killers to the place of execution of the victim. Accused acted under the impulse of uncontrollable fear.
  e. ***People v Bagalawis.*** Nothing will excuse the act of joining an enemy to commit treason but the fear of immediate death.

- Speculative, fanciful and remote fear is **not** uncontrollable fear
  a. ***People v Moreno.*** Accused executed the victim under the order of Major Sasaki. When accused refused to comply with the order, the Captain said "You have to comply… otherwise, you have to come along with us." That threat is not of such serious character and imminence.
  b. ***People v Fernando.*** Mere fear of a member of the Huk movement to disobey or refuse to carry out orders of the organization, in the absence of proof of actual physical or moral compulsion to act, is not sufficient to exempt accused from criminal liability.

IRRESISTABLE FORCE v UNCONTROLLABLE FEAR

IRRESISTABLE FORCE	UNCONTROLLABLE FEAR
The offender uses violence or physical force to compel another person to commit a crime	The offender employs intimidation or threat in compelling another to commit a crime

6. INSUPERABLE OR LAWFUL CAUSES

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

7. Any person who fails to perform an act required by law, when prevented by some lawful insuperable cause.

BASIS. Excuses accused because he acts without **intent**, the third condition of voluntariness in an intentional felony

ELEMENTS, INSUPERABLE OR LAWFUL CAUSES

1. **That an ACT IS REQUIRED BY LAW TO BE DONE**
2. **That a person FAILS TO PERFORM such act**
3. **That his failure to perform such act was DUE TO SOME LAWFUL OR INSUPERABLE CAUSES**

- **Prevented by some LAWFUL CAUSE**
  a. Article 116 RPC requires a Filipino citizen who knows of a conspiracy against the Government to report the same to the governor or fiscal of the province where he resides. A priest who do not disclose a confession to commit conspiracy against the Government is exempt from criminal liability.

- **Prevented by some INSUPERABLE CAUSE**
  a. ***US v Vicentillo.*** Under the law, person arrested must be delivered to the nearest judicial authority within 18 hours, otherwise, the public officer will be liable for arbitrary detention. Municipal president detained the offended party for three days because to take him to the nearest justice of the peace required journey for three days by boat as there was no other means of transportation.
  b. ***People v Bandian.*** Mother was overcome by severe dizziness and extreme debility at the time of childbirth and left the child in a thicker where it died. Mother is not liable for infanticide because it was physically impossible for her to take home the child.

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ABSOLUTORY CAUSES

ABSOLUTORY CAUSES. Those where the act committed is a crime but for reasons of public policy and sentiment, there is no penalty imposed.

A. JUSTIFYING CIRCUMSTANCES
B. EXEMPTING CIRCUMSTANCES
C. OTHER ABSOLUTORY CAUSES

1. **SPONTANEOUS DESISTANCE DURING THE ATTEMPTED STAGE**
   Article 6. The spontaneous desistance of the person who commenced the commission of a felony before he could perform all the acts of execution (attempted stage), and no crime under another provision of the RPC or other penal law is committed

2. **LIGHT FELONY IS ONLY ATTEMPTED/FRUSTRATED, AND IS NOT AGAINST PERSONS OR PROPERTY.**
   Article 7. When light felonies are punishable. - Light felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

3. **ACCESSORY IS A RELATIVE TO THE PRINCIPAL**
   Article 20. Accessories who are exempt from criminal liability. - The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

4. **Article 19, par 1.** Considered accessory by taking part subsequent to commission of the crime "By profiting themselves or assisting the offender to profit by the effects of the crime."

5. **LEGAL GROUNDS FOR ARBITRARY DETENTION**
   Article 124, last paragraph. The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

6. **SLIGHT OR LESS SERIOUS INJURIES INFLICTED BY A PERSON WHO SURPRISED HIS SPOUSE OR DAUGHTER IN THE ACT OF SEXUAL INTERCOURSE WITH ANOTHER PERSON**
   Article 247. Death or physical injuries inflicted under exceptional circumstances. - Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

   If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

7. **LEGAL GROUNDS FOR TRESPASS**
   Article 280, par. 3. The provisions of this article (on trespass to dwelling) shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inn and other public houses, while the same are open.

8. **Article 332. Persons exempt from criminal liability. - No criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:**

   1) **Spouses, ascendants and descendants, or relatives by affinity in the same line.**
   2) **The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and**
   3) **Brothers and sisters and brothers-in-law and sisters-in-law, if living together.**

   The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

9. **MARRIAGE OF THE OFFENDER AND OFFENDED PARTY IN RAPE, ABDUCTION, SEDUCTION, OR ACTS OF LASCIVIOUSNESS**
   Article 344. Par 4. In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

10. **INSTIGATION** is an absolutory cause.
    ⇨ **ENTRAPMENT** is not an absolutory cause.

    BASIS. A sound public policy requires that the courts shall condemn **instigation** by directing the acquittal of the accused.

    a. ***US v Phelps.*** A person instigated to smoke opium by the police officer himself is not criminally liable.
    b. ***People v Lia Chua.*** Pretending to have an understanding with the Collector of Customs, Juan Samson smoothened the way for the introduction of prohibited drugs **after** the accused had already planned its importation and ordered for the said drug. Juan Samson did not induce or instigate the accused. It was a trap set to catch a criminal.

INSTIGATION	ENTRAPMENT
Instigator practically introduces the would-be accused into the commission of the offense and himself becomes co-principal	The ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan
The law enforcer conceives the comission of the crime and suggests to the accused who adopts the idea and carries it into execution.	**The means originates from the mind of the criminal. The idea and resolve come from him.**
Absolutory cause	**NOT** absolutory cause
Accused will be acquitted	**NO** a bar against accused's prosecution and conviction

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Must be made by public officers or private detectives	

►If instigation was made by a **private individual** and not performing public function, both he ***(principal by induction)*** and the one induced ***(principal by direct participation)*** are criminally liable.

COMPLETE DEFENSES IN CRIMINAL CASES

1. **ANY OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IS NOT PROVED BY THE PROSECUTION AND THE ELEMENTS PROVED DO NOT CONSTITUTE ANY CRIME**

2. **THE ACT OF THE ACCUSED FALLS UNDER ANY OF THE JUSTIFYING CIRCUMSTANCES.** (Article 11)

3. **THE CASE OF THE ACCUSED FALLS UNDER ANY OF THE EXEMPTING CIRCUMSTANCES** (Article 12)

4. **THE CASE IS COVERED BY ANY OF THE ABSOLUTORY CAUSES**

5. **GUILT OF THE ACCUSED WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT**

6. **PRESCRIPTION OF CRIMES** (Article 89)

   Article 89. How criminal liability is totally extinguished. - *Criminal liability is totally extinguished:*
   - *1) By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.*
   - *2) By service of the sentence;*
   - *3) By amnesty, which completely extinguishes the penalty and all its effects;*
   - *4) By absolute pardon;*
   - ***5) By prescription of the crime;***
   - *6) By prescription of the penalty;*
   - *7) By the marriage of the offended woman, as provided in Article 344 of this Code.*

7. **PARDON BY THE OFFENDED PARTY BEFORE THE INSTITUTION OF CRIMINAL ACTION IN CRIME AGAINST CHASTITY** (Article 344)

   Article 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. - *The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.*

   The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

   The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

   In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

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CHAPTER THREE
CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

Article 13. Mitigating circumstances. - The following are mitigating circumstances;

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.
2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.
3. That the offender had no intention to commit so grave a wrong as that committed.
4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.
5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.
6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.
7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;
8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.
9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.
10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

MITIGATING CIRCUMSTANCES. Those which, if present in the commission of the crime, do not entirely free the actor from criminal liability, but serve only to reduce the penalty.

- **BASIS.** Based on the diminution of either freedom of action, intelligence, or intent, or on the lesser perversity of the offender.
- **Mitigating circumstances only reduce the penalty but do not change the nature of the crime**

CLASSES OF MITIGATING CIRCUMSTANCES

1. **Ordinary Mitigating Circumstances**
   - Those enumerated in subsections 1 to 10 of Article 13
   - Those mentioned in subsection 1 of Article 13 are ordinary mitigating circumstances, if Article 69, for instance, is no applicable.

     Article 13 (1). *Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.*

2. **Privileged Mitigating Circumstances**
   a. **Article 68. Penalty to be imposed upon a person under eighteen years of age.** - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:

      1) Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

      2) Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

   b. **Article 69. Penalty to be imposed when the crime committed is not wholly excusable**. - A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Article 11 and 12, **provided** that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

   c. **Article 64 (5). Rules for the application of penalties which contain three periods**. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

      5) When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

   d. **PRIVILEGED MITIGATING CIRCUMSTANCES APPLICABLE ONLY TO PARTICULAR CRIMES**

      1) Voluntary release of the person illegally detained within three days without the offender attaining his purpose and before the institution of criminal action. (Art 268, par 3). The penalty is one degree lower.

      2) Abandonment without justification of the spouse who committed adultery. (Art 333, par 3) The penalty is one degree lower.

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ORDINARY MITIGATING v PRIVILEGED MITIGATING

ORDINARY MITIGATING	PRIVILEGED MITIGATING
Susceptible of being offset by any aggravating circumstance	Cannot be offset by aggravating circumstance
If not offset by an aggravating circumstance, produces only the effect of applying the penalty provided by law for the crime in its minimum period, in case of divisible penalty	Produces the effect of imposing upon the offender the penalty lower by one or two degrees than that provided by law for the crime

MITIGATING CIRCUMSTANCES

1. **INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE**
2. **MINORITTY (15-18 Y/O WITH DISCERNMENT), OR SENILITY (OVER 70 Y/O)**
3. **NO INTENTION TO COMMIT SO GRAVE A WRONG (PRAETER INTENTIONEM)**
4. **SUFFICENT THREAT OR PROVOCATION**
5. **VINDICATION OF GRAVE OFFENSE**
6. **PASSION AND OBFUSCATION**
7. **VOLUNTARY SURRENDER AND CONFESSION OF GUILT**
8. **PHYSICAL DEFECT OF OFFENDER**
9. **ILLNESS OF THE OFFENDER**
10. **SIMILAR OR ANALOGOUS CIRCUMSTANCES**

1. INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.

►When not all (but majority of) the elements of the following justifying or exempting circumstances are present, they give place to mitigation:

1. Self-defense (Art 11(1))
2. Defense of Relatives (Art 11(2))
3. Defense of Starnger (Art 11(3))
4. State of Necessity (Art 11(4))
5. Performance of Duty (Art11 (5))
6. Obedience to order of superior (Art 11(6)
7. Minority above 15 but below 18 years of age (RA 9344)
8. Causing injury by mere accident (Art 12 (4))
9. Uncontrollable fear (Art 12 (6))

*Article 12 paragraphs 1 and 2 cannot give place to mitigation. The mental condition of a person is indivisible, no middle ground between sanity and insanity.

⇨ If offender is suffering from some illness which diminishes the exercise of willpower, without depriving him of consciousness of his acts, such circumstance is considered mitigation under Article 13 par 9.

INCOMPLETE JUSTIFYING CIRCUMSTANCES

a. **INCOMPLETE SELF-DEFENSE, DEFENSE OF RELATIVES, AND DEFENSE OF STRANGER**
   - **Unlawful aggression must be present**, it being an indispensable requisite.
     1) Unlawful aggression + means employed is not reasonable + lack of provocation
     2) Unlawful aggression + reasonable necessity of the means employed + gave provocation

b. **Incomplete justifying circumstances of AVOIDANCE OF GREATER EVIL OR INJURY**
   - If any of the last two requisites is absent, mitigating
     1) (First) That the evil sought to be avoided actually exists + (Second) That the injury feared be greater than that done to avoid it;
     2) (First) That the evil sought to be avoided actually exists + (Third) That there be no other practical and less harmful means of preventing it.

c. Incomplete justifying circumstance of PERFROMANCE OF DUTY
   - ***People v Oanis.*** One of the two requisites must be present
     a) That the accused acted in the performance of a duty or in the lawful exercise of a right or office; or
     b) That the injury caused or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right

d. Incomplete justifying circumstance of OBEDIENCE TO AN ORDER
   - **Requisite**
     a) Lawful Purpose
     b) Act in Obedience to an Order

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- ***People v Bernal.*** Only second requisite was present, SC granted mitigation. Roleda fired at the prisoner following the order of his sergeant, but the order was obviously illegal and unwarranted. Benting led his companions to believe that Pilones had killed not only a barrio lieutenant but also a comrade military police. This may have aroused in Roleda a feeling of resentment that may have impelled him to readily and without questioning follow the order of Sgt. Benting. Roleda was a subordinate of Sgt. Benting who gave the order, and while out on patrol, the soldiers were under the immediate command and control of Sgt. Benting.

INCOMPLETE EXEMPTING CIRCUMSTANCES

a. **Incomplete exempting circumstance of OVER 15 AND UNDER 18 YEARS OF AGE**
   - Two requisites/conditions must be present
     a) That the offender is over 15 and under 18 years old, **AND (+)**
     b) That he acted **wit**h discernment

b. **Incomplete exempting circumstance of ACCIDENT**
   - Requisites
     a) A person is performing a lawful act
     b) He causes injury to another by mere accident
     c) Without intention of causing it
   - Elements of the justifying circumstance **not** present
     a) Due care
     b) Without fault of causing it

   - Person must be performing a lawful act and without intention to cause injury, otherwise, he commits an intentional felony
   - **Article 365 which punishes felony by imprudence and negligence sets a penalty lower than that which punishes intentional felony; hence, mitigating**

c. **Incomplete exempting circumstance of UNCONTROLLABLE FEAR**
   - Either one of the two requisites must be present
     a) That the threat which cause the fear was of an evil greater than, or at least equal to, that which he was require to commit, **OR**
     b) That it promised an evil of such gravity and imminence that an ordinary person would have succumbed to it (uncontrollable)

2. MINORITTY (15-18 Y/O WITH DISCERNMENT), OR SENILITY (OVER 70 Y/O)

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.

BASIS. Based on the diminution of intelligence which is a condition of voluntariness.

►When the offender is at least 15 but under 18 y/o, he may be exempt from criminal liability if he acted **WITHOUT discernment.**

⇨ If such offender acted **WITH** discernment, he shall undergo diversion programs under RA 9344.

DIVERSION. An alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

DIVERSION PROGRAM. The program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

SYSTEM OF DIVERSION

Where the imposable penalty is not more than six years imprisonment	The law enforcement office or Punong Barangay, assisted by local SWDO and LCPC Conduct mediation, family conferencing and conciliation, and where appropriate, adopt indigenous modes of conflict resolution
In victimless crimes with imposable penalty is not more than six years imprisonment	Local SWDO Meet with the child and hi parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC
Where the imposable penalty exceeds six years imprisonment	Diversion measures may be resorted to only by the courts

►A CICL may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry to the system. A **Contract of Diversion** may be entered into.

a. If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed.
b. Diversion program shall be effective and binding if accepted **in writing** by both parties concerned. Must be **signed by the parties and appropriate authorities.**
c. Diversion proceedings shall be completed **within 45 days**. Period of prescription of the offense shall be suspended until the completion of the diversion proceedings.
d. Local SWDO shall supervise the implementation of the diversion program.
e. The child shall present himself to the competent authorities that imposed the diversion program **at least once a month** for reporting and evaluation.
f. **Failure to comply with** the terms and conditions of the **contract of diversion** as certified by the local SWDO shall give the offended party the option to institute the appropriate legal action.
g. Period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding two years.
h. **Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all level and phases of the proceedings including judicial level.**

►If the offense is not subject to diversion:

a. The Punong Barangay handling the case shall, within three days from the determination of the absence of jurisdiction over the case or termination of the diversion proceeding as the case may be, forward the records of the case to the law enforcement officer, prosecutor or the appropriate court.

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b. In case a law enforcement officer handles the case, he shall forward the records of the case within the three days to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation/
c. **The document transmitting said records shall display the word "CHILD" in bold letters.**

►Senility or that the offender is over 70 y/o is only a generic mitigating circumstance.

- Prior to the enactment of RA 9346 (prohibiting death penalty), there were two cases where senility had the effect of a privileged mitigating circumstance:
  1) When the offense is punishable by death, that death penalty shall not be imposed
  2) When the death penalty is already imposed, it shall be suspended and commuted.
- The death penalty will be lowered to life imprisonment (reclusion perpetua).

3. NO INTENTION TO COMMIT SO GRAVE A WRONG (PRAETER INTENTIONEM)

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

3. That the offender had no intention to commit so grave a wrong as that committed.

BASIS. Intent, which is an element of voluntariness in intentional felonies, is diminished

►Take into account only when it is proven that there is a **notable** and **evident disproportion** between the means employed to execute the criminal act and its consequences.

APPLICATION OF ART 13 PAR 3

a. Applicable only to **offenses resulting in Physical Injuries or material harm**
   ⇨ Does **NOT** apply in **slander, defamation**
   ⇨ Appreciated in **Malversation of Public Funds**

b. Appreciated in **murder qualified by circumstances** based on manner of commission, but not on state of mind of accused
   ⇨ Does not apply in murder **qualified by treachery**

c. **LACK OF INTENT TO KILL,** appreciated in crimes against persons when the victim dies
   ⇨ Does not apply in **Physical Injuries**

d. Does **NOT** apply in **felonies by negligence** (since in *culpa*, intent is replaced by negligence, imprudence, lack of foresight or lack of skills)

e. Not applicable in **Unintentional Abortion**.
   ⇨ ***People v Falmeño.*** Art 13 par 3 was applied when accused having intended at the most to maltreat the complainant only, pulled her hair, causing her to fall and caused the fetus to fall from her womb.

EXAMPLES, WHEN INTENT IS PRESENT/ PROVEN

a. ***People v Rabao.*** Husband punched his wife in the abdomen causing the rapture of her hypertrophied spleen from which she died.
b. ***US v Bertucio.*** Accused gave a single blow at the right arm of the victim. Victim died due to neglect and lack of medical treatment. Those who attended to victim did not know how to stop or control in time the victim's hemorrhage.
c. ***People v Ural.*** Policeman boxed deceased detention prisoner inside the jail. Deceased collapsed because of the fistic blow. Accused stepped on the body and left. He returned with a bottle, poured its content to the deceased and ignited it. **Held:** It is manifest from the proven facts that appellant Ural had no intent to kill Napola. His design was only to maltreat him may be because in his drunken condition he was making a nuisance of himself inside the detention cell. When Ural realized the fearful consequences of his felonious act, he allowed Napola to secure medical treatment at the municipal dispensary.

►In Article 13 Par 3, it is the intention of the offender **at the moment when he is committing the crime** that is considered**, NOT** his intention during the planning stage.

HOW INTENTION IS PROVEN

1. **Intention, being an internal state, must be judged by external acts.**
   a. The fact that the blow was or was not aimed at a vital part of the body
   b. ***US v Mendac.*** By hitting the victim in the abdomen, accused has a definite and perverse intention of producing the injury.
   c. ***People v Ural.*** After realizing his crime, accused allowed the victim to secure medical treatment
   d. ***US v Fritzgerald.*** By using a revolver which is sufficient means to kill, intent to kill is presumed.
   e. ***People v Amit.*** Accused was 25 who tried to rape victim, 57. When victim resisted, accused boxed her, held her on the neck and pressed it down while she was lying on her back and he was on top of her. The acts were sufficient to produce the death of victim.
   f. ***People v Orongan.*** Accused used a six-inch knife to stab victim. He even attempted a second stab. Art 13 Par 3 does not apply.

2. **The weapon used, the part of the body injured, the injury inflicted, and the manner it is inflicted may show that the accused intended the wrong committed.**
   a. ***People v Braña.*** Inflicting five stab wounds in rapid succession negates pretense of lack of intention to cause so serious an injury.
   b. ***People v Abueng.*** In robbery with homicide, where it has not been proven that in forcing entrance through the door, accused were not aware that the deceased was behind the door and would be hurt.

4. SUFFICENT THREAT OR PROVOCATION

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

BASIS. Diminution of intelligence and intent

PROVOCATION. Any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating any one

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REQUISITES, PROVCATION

1. **That the provocation must be sufficient**
2. **That it must originate from the offended party; and**
3. **That the provocation must be immediate to the act, i.e. to the commission of the crime by the person who is provoked**

1. That the provocation must be sufficient

- **Sufficient** means adequate to excite a person to commit the wrong and must accordingly be proportionate to its gravity
- Depends upon the act constituting the provocation, the social standing of the person provoked, the place and the time when the provocation is made
- **EXAMPLES, SUFFIFICENT PROVOCATION**
  a. ***US v Carrero.*** The victim, a laborer, left his place in the line to receive their wages and forced his way into the files. Accused foreman ordered him out but he persisted. Foreman gave him a blow. When the aggression is in retaliation for an insult, injury, or threat, the offender cannot claim self-defense but at most, he can be given the provocation as mitigating circumstance.
  b. ***US v Firmo.*** Deceased abused and ill-treated the accused by kicking and cursing him.
  c. ***People v Marquez.*** While in his house, the accused saw an unknown person jumping out of his window and his wife begged for pardon on her knees. He killed his wife.
  d. ***US v Cortes.*** In a challenge to fight, where the deceased insulted the accused, there is no self-defense but there is provocation.
     ⇨ ***US v Mandac.*** Deceased challenged accused. They were prevented by other people from fighting. Accused sought deceased in their house. No provocation.
  e. ***People v Manansala.*** Victim hit the accused on the eye with his fist before the fight.
  f. ***US v Firmo.*** The accused who was intoxicated, abused the accused by kicking and cursing him. Accused stabbed victim.
  g. ***People v Macariola.*** Victim kicked accused on the chest prior to the stabbing.
  h. ***Romera v People.*** Thrusting his bolo to accused, threatening to kill him and hacking the bamboo walls of his house.

- **EXAMPLES, PROVOCATION NOT SUFFICIENT**
  a. ***People v Laude.*** Victim asked accused for explanation for his derogatory remarks against certain ladies.
  b. ***People v Nabora.*** Victim pointed his finger at the accused, asked him what he was doing at there, and said "Don't you know we are watching for honeymooners here?"
  c. ***US v Abijan.*** Deceased (public officer) ordered the arrest of the accused for misdemeanor. Performance of a duty is not a source of provocation.
  d. ***People v Court of Appeals, GR 103613.*** Blowing of horns, cutting of lanes or overtaking are not sufficient provocation.

2. That it must originate from the offended party; and

- Ratio: The law says that the provocation is "on the part of the offended party."

3. That the provocation must be immediate to the act, i.e. to the commission of the crime by the person who is provoked

- ***People v Alconga.*** Provocation made by the deceased in the first stage of the fight is **NOT** a mitigating circumstance when the accused killed him after he had fled.
- **Between the provocation by the victim and the commission of the crime by the person provoked/ accused, there should NOT be an interval of time.**

  Ratio: The law requires that thee provocation "immediately preceded the act."

- **Threat immediately preceded the act**
- **Threat must NOT be offensive or positively strong**, because if it is, the threat is an unlawful aggression that will give rise to self-defense
- Vague threats are not sufficient
  a. Not sufficient: "If you do not agree, beware."
  b. Sufficient: "Follow us if you dare and we will kill you."

SUFFICIENT PROVOCATION,
AS A REQUISITE OF INCOMPLETE SELF-DEFENSE v
AS A MITIGATING CIRCUMSTANCE

Incomplete Self-Defense	Mitigating Circumstance
Must be absent on the part of the person defending himself	Must be present on the part of the offended party/ accused

5. VINDICATION OF GRAVE OFFENSE

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.

BASIS. Based on the diminution of the conditions of voluntariness

REQUISITES, VINDICATION

1. **That there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees;**
2. **That the felony is committed in vindication of such grave offense. A lapse of time is allowed between the vindication and the doing of the grave offense.**

1. That there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees;

- **AGAINST THE PERSON OR HIS RELATIVES;**
  Relatives included
  1. Spouse
  2. Ascendants and descendants
  3. Legitimate, natural or adopted brothers or sisters
  4. Relative by affinity within the same degree
     - Relationship by affinity created by marriage survives the death of any of the spouses.

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- **GRAVITY OF OFFENSE**
  - Must be decided by court, having in mind the social standing o fthe person, the place and the time when the insult was made***(People v Ruiz)***
  - **EXAMPLES**
    a. ***US v Ampar.*** During a fiesta, a 70 y/o man asked deceased for roast pig. In the presence of many guests, the deceased insulted the old man. When the deceased was squatting down, the old man struck him with an axe on the head from behind. The **age** of the accused and the **place** were considered in determining gravity of the offense.
    b. ***People v Rosel.*** Remark of the injured party before the guests that accused lived at the expense of his wife. Place taken into consideration.
    c. ***People v Luna.*** Taking into account that American forces had just occupied Manila, accused considered the remark of offended party "You are a Japanese spy" as a grave offense. Time was considered.
    d. ***US v Alcasid.*** Having found the victim in the act of committing an attempt against his wife
    e. ***People v David.*** When injured party insulted the father of the accused contemptuously

2. That the felony is committed in vindication of such grave offense. A lapse of time is allowed between the vindication and the doing of the grave offense.

- The word immediate used in the English text is not the correct translation of the Spanish word ***"proxima."***
- ***People v Parana.*** Vindication was considered immediate when the influence of a grave offense, by reason of its gravity and the circumstances under which it was inflicted lasted until the crime was committed.
- **EXAMPLES, INTERVAL OF TIME NEGATING VINDICATION**
  a. ***People v Lumayag.*** Victim boxed accused several times in the face, and Victim was convicted for less serious physical injuries. Victim appealed. Pending appeal and approximately nine months after the boxing, Accused killed Victim.
  b. ***People v Benito.*** At 11:00 am in the presence of accused and his officemates, victim uttered *"Hindi ko alam na itong Civil Service pala ay istambayan ng magnanakaw."* At 5:00 pm of the same day, accused killed the victim.
  c. ***People v Lopez.*** Where the accused heard the deceased say that the accused's daughter is a flight, and the accused stabbed the victim two months later.

PROVOCATION v VINDICATION

PROVOCATION	VINDICATION
Made directly only to the person committing the felony	Grave offense may be committed against the offender's relatives provided by law
The cause need not be a grave offense	Offended party/ victim must have done a **grave offense** to the offender or his relatives
Provocation or threat must **immediately** precede the act	Vindication may be **proximate**
There be no interval of time between the provocation and crime	Allows interval of time between the grave offense and the crime
Concerns mere spite against one giving provocation	Concerns the honor of a person

►Law is more lenient in vindication since it concerns the **honor of a person** which is an offense more worthy of consideration than mere spite against one giving provocation or threat.

►**Provocation should be proportionate to the damage caused by the act and adequate to stir one to its commission**

- Example: ***People v Lopez.*** The remark attributed to the deceased that the daughter of the accused is a flirt does not warrant and justify the act of accused in slaying the victim.

►**Vindication must be directed to the accused.**

- ***People v Benito.*** Remark of the victim made in the presence of the accused and his workmates that the Civil Service is a hangout for thieves was general in nature and not specifically directed to the accused. This cannot be considered a grave offense against the accused.

►**Vindication of a grave offense is incompatible with passion or obfuscation.**

- They may be deemed to have attended the commission of the crime **alternatively**
- Both mitigating circumstances **cannot co-exist**

6. PASSION AND OBFUSCATION

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

BASIS. Diminution of intelligence and intent of the accused

- When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power.

REQUISITES, PASSION OR OBFUSCATION

1. **That there be an act, both unlawful and sufficient to produce such a condition of mind;**
2. **That said act which produced the obfuscation was not far removed from the commission of the crime by a considerate length of time, during which the perpetrator might recover his normal equanimity**

1. That there be an act, both unlawful and sufficient to produce such a condition of mind;

- **The act of the offended party/ victim must be unlawful or unjust**
  a. ***People v Quijano.*** Common-law wife who left the common house and refused to go home with accused was acting within her rights, and the accused common-law husband had no legitimate right to compel her to go with him. The act of the wife was insufficient to produce passion and obfuscation.

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b. ***US v Ortenio.*** Accused killed his wife when she visited her uncle. Accused was jealous and wife refused to return home until after the arrival of her uncle. Mitigating circumstance was present.
c. ***People v Ancheta.*** Upon seeing the person who stole his carabao, accused shot the thief. Mitigating circumstance was present.
d. ***People v Samonte Jr.*** Deceased created trouble during the wake which scandalized the mourners and offended the sensibilities of the grieving family. Mitigating circumstance was present.
e. ***People v Castro.*** Deceased boxed the accused's four year old son.

- **Exercise of a right or fulfillment of duty by the offended party/ victim is not a proper source of passion or obfuscation.**
  a. ***People v Noynay.*** Accused's carabao destroyed the sugarcane of the victim. Victim demanded payment. Accused refused to pay. When victim was about to take the carabao to the barrio lieutenant, accused killed him. Victim was clearly within his rights in what he did. Mitigating circumstances not present.
  b. ***People v Caliso.*** The mother had the perfect right to reprimand the accused, her child, for indecently converting the family's bedroom into a rendezvous of herself and her lover. Mitigating circumstance not present.
  c. ***US v Taylor.*** Accused was making a disturbance on a public street and a policeman came to arrest him. Anger and indignation resulting from the arrest cannot be considered passion or obfuscation.

- **The act must be sufficient to produce such a condition of mind.**
  a. ***US v Diaz.*** If the cause of the loss of self-control was **trivial** and **slight**, the obfuscation is not mitigating. Examples:
     1) Victim failed to work on the hacienda of which the accused was the overseer
     2) When the accused saw the injured party picking fruits from the tree claimed by the former

2. That said act which produced the obfuscation was not far removed from the commission of the crime by a considerate length of time, during which the perpetrator might recover his normal equanimity

- The act producing obfuscation **must not be far removed from the commission of the crime by a considerable length of time**, during which the accused might have recovered his normal equanimity. To be proven by defense.

- **The crime committed must be the result of a sudden impulse of natural and uncontrollable fury.**
  a. ***People v Daos.*** Obfuscation cannot be mitigating in a crime which was **planned and calmly meditated**, or the impulse upon which the accused acted was **deliberately fomented** by him for a considerable period of time.

- Passion and obfuscation need not be felt only in seconds before the commission of the crime. **It may build up and strengthen over time** until it can no longer be repressed and will ultimately motivated the commission of the crime.
  a. ***People v Oloverio.*** When the victim not only threatened to molest the accused's daughter but also accused him in public of having incestuous relations with his mother, insulting him in full view of his immediate superior, passion may linger and build up over time.

- Passion or obfuscation may constitute a mitigating circumstance only when the same arose from **lawful sentiments.**
  ⇨ Even if there is passion or obfuscation on the part of the offender, there is no mitigating circumstance when the act committed is:
  1) in a spirit of **lawlessness;** or
  2) in a spirit of **revenge.**

  a. ***US v Hicks.*** Deceased separated from accused after five years of **illicitly** living together, and lived with another man. Accused killed deceased. Did not arise from legitimate feelings.
  b. ***US v De la Cruz.*** Accused killed his common-law-wife after discovering in flagrante in carnal communication with a common acquaintance. Impulse was caused by the sudden revelation that she was untrue to him. Mitigating circumstance is present.
  c. ***People v Engay.*** Accused common law wife lived with deceased for 15 years as a real wife who house she helped support. Deceased married another woman. Accused killed him. Mitigating circumstance present.
  d. ***People v Yuman.*** Common-law spouses for three or four years, until husband left their common dwelling. Deceased gave her a harsh treatment. Thinking that after the husband took advantage of her, he abandoned her, the wife stabbed husband. Mitigating circumstance is present.
  e. ***People v Bello.*** Accused learned that his (former) partner was being used for purposes of prostitution, which wounded his feelings. He consumed a large amount of wine before visiting his partner to plead that she leave her work. She insultingly refused the proposal and showed her determination to pursue a lucrative profession. Mitigating circumstance was present.
  f. ***People v Gravino.*** Girl's sweetheart killed the girl's father and brother because the girl's parents objected their getting married and the girl consequently broke-off their relationship. Act was actuated by lawlessness and revenge. No mitigating circumstance.

In spirit of lawlessness

g. ***People v Caliso.*** Mother of the child has the right to reprimand accused for indecently converting the family's bedroom into a rendezvous of herself and her lover. Nanny poisoned the nine-month-old child. Nanny was actuated by lawlessness and revenge.
h. ***People v Cabarrubias.*** Screams of an eight year old child are not provocative enough to

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generate a sudden impulse of natural and uncontrolled fury.

i. ***People v Sanico.*** Accused raped a woman because he found himself in a secluded place with a young ravishing woman who is almost naked. No mitigating circumstance.

In spirit of Revenge

j. ***People v Caliso.*** Woman poisoned the nine-month-old child she is taking care of with acid. Before the killing, the mother of the child surprised her with a man on the bed of the master and scolded her. No mitigating circumstance, she actuated with lawlessness and revenge.

k. ***People v Bates.*** Marcelo was infuriated upon seeing his brother shot by Jose. Marcelo hacked Jose right after seeing him shoot his brother. Upon seeing his brother dead, Marcelo went back to Jose who was already prostate and hardly moving. The second hacking was a clear case of acting out of revenge.

- **The offender must act under the impulse of special motives.**
  a. ***People v De Guia.*** Impulse in the state of **excitement** is not considered powerful as to produce obfuscation.
     ⇨ ***People v Flores.*** Each used a very insulting language concerning the other, and that they must have been very greatly excited as a result of the quarrel. Mitigating circumstance of obfuscation was present.
  b. ***People v Mil.*** Accused killed deceased because he did not deliver the letter of F to A. On the letter, the accused had pinned his hopes of settling the case against him amicably. Failure of deceased to deliver the letter is a prior unjust and improper act sufficient to produce great excitement and passion.

- **Where the crime arose out of rivalry, passion or obfuscation is mitigating.** Resentment resulting from rivalry is a powerful instigator of jealousy and prone to produce anger and obfuscation.
  ⇨ **Obfuscation arising from jealousy cannot be invoked if the relationship is illegitimate. *(People v Salazar; People v Olgado)***
  ⇨ ***US v De la Peña.*** Loss of reason and self-control due to jealousy between rival lovers was not mitigating. (in an early case)

- **The cause producing passion or obfuscation must come from the offended party.**
  a. ***People v Esmedia.*** Two sons in the defense of their wounded father killed S. Under great excitement, they also killed C who was near the scene at the time. C had not taken part of the quarrel and had not provoked the sons. Passion and obfuscation cannot mitigate their liability with respect to C.

- **Passion or obfuscation may lawfully arise from the causes existing only in the honest belief of the offender.**
  a. ***US v Ferrer.*** The defendant believed that the deceased caused his dismissal from his employment
  b. ***US v Maalintal.*** The defendants believed in good faith that the deceased casted upon their mother a spell of witchcraft which was the cause of her illness
  c. ***Bongalon v People.*** Accused believed that victims had thrown stones at his two minor daughters and burned the hair of one of the daughters

- **Provocation and obfuscation arising from one and the same cause should be treated as only one mitigating circumstance.**

- **Vindication of grave offense cannot co-exist with passion and obfuscation.**
  ⇨ **EXCEPTION:** Where there are other facts although closely connected with the fact upon which one circumstance is premised, the other circumstance may be appreciated as based on the other fact. ***(People v Diokno)***

- **Passion or obfuscation is compatible with lack of intention to commit so grave a wrong.**

- **Passion or obfuscation incompatible with treachery, and evident premeditation.**

PASSION OR OBFUSCATION V IRRESISTABLE FORCE

PASSION/ OBFUSCATION	IRRESISTABLE FORCE
Mitigating Circumstance	Exempting Circumstance
Cannot give rise to an irresistible force	Requires physical force
Is in the offender himself	Comes from a third person
Must arise from lawful sentiments	Irresistible force is unlawful

PASSION V PROVOCATION

PASSION/ OBFUSCATION	PROVOCATION
Produced by an impulse which may be caused by provocation	Comes from the injured party
Offense need not be immediate The influence of the impulse must last until the moment the crime is committed	Must immediately precede the commission of the crime
Effect is loss of reason and self-control of offender	Effect is loss of reason and self-control of offender

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7. VOLUNTARY SURRENDER AND CONFESSION OF GUILT

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

BASIS. Lesser perversity of the offender.

TWO MITIGATING CIRCUMSTANCES IN ART 13 PAR 7

1. **Voluntary surrender to a person in authority or his agents**
2. **Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution**

- When both of them are present, they should have the effect of two independent circumstances

VOLUNTARY SURRENDER TO A PERSON IN AUTHORITY OR HIS AGENTS

REQUISITES

1. **That the offender had not been actually arrested**
2. **That the offender surrendered himself to a person in authority or to the latter's agent**
3. **That the surrender was voluntary**
   a. Voluntary surrender must be **spontaneous** in such a manner that is shows the interest of the accused to surrender unconditionally to the authorities
      - **Spontaneous.** Emphasized the idea of an inner impulse acting without external stimulus. The conduct of accused and not his intention alone after the offense determines spontaneity of surrender.
      - When the offender imposed a condition or acted with external stimulus, his surrender is not voluntary
      - **There is spontaneity even if the surrender was induced by fear.**

   b. Either because he acknowledged his guilt or he wishes to save them the trouble and expenses necessarily incurred in his search and capture

   c. Mitigating Circumstance cannot be appreciated when the offender did not intend to assume responsibility for crime even if he went with the barangay officials to the police station ***(People v Nimuan)***

EXAMPLES, VOLUNTARY SURRENDER

a. ***People v Tenorio.*** After he commit the crime, accused when to the municipal hall, and in the presence of a patrolman, threw away his weapon, raised his hands and admitted his crime.
b. ***People v Dayrit.*** After commission of the crime, accused ran into his hotel room to hide from the companions of the deceased. He threw his weapon at the door. When the police arrived, he admitted ownership of the weapon and voluntarily wen with them.
c. ***People v Benito.*** After shooting, the accused called the police. When police arrived, he voluntarily approached them and without revealing his identity, told that he knew the suspect and his motive. In the police station, he confided to the investigators that he was voluntarily surrendering and surrendered the gun he use.
d. ***People v Magpantay.*** Two accused left the scene of the crime but made several attempts to surrender to various local officials which did not materialize for some reasons. It was already a week before after when they were finally able to surrender.
e. ***People v Radomes.*** Accused did not offer any resistance nor try to hide when a policeman ordered him to come down his house. He even surrendered the bolo he used in the crime.
f. ***People v Jereza.*** Accused wen to the police headquarters to surrender the firearm used in the crime. His arrival at the police station is considered an act of surrender.
g. ***People v Braña.*** The warrant of arrest had not been served or not returned unserved because the accused cannot be located. There is direct evidence that the accused voluntarily presented himself to the police when he was taken into custody. Voluntary surrender was appreciated.

EXAMPLES, NOT CONSTITUTING VOLUNTARY SURRENDER

a. The warrant of arrest showed that the accused was in fact arrested.
b. ***People v Roldan.*** Accused surrendered only after the warrant of arrest was served upon him.
c. ***People v Velez.*** Police blotter used the word "surrendered" but the accused was admitted that he was actually yielded because of the warrant of arrest.
d. ***People v Mationg.*** Accused went into hiding and surrendered only when he realized that the police were closing in on them.
e. ***People v Salvilla.*** Accused were asked to surrender by polic and military but they refused until they realized that were completely surrounded and there was no chance of escape. The surrender was not spontaneous.
f. ***People v De la Cruz.*** Search for accused lasted for four years. This belies the spontaneity of the surrender.
g. ***People v Garcia.*** Accused went to a police in Dapupan City and asked that he be accompanied to Olongapo City after he learned that his picture was seen posted in the municipal building. No other evidence that he deliberately surrendered to police.
h. ***People v Trigo.*** Accused inly went to the police station to report that his wife was stabbed by another persona and to seek protection for himself.
i. ***People v Rogales.*** Accused went to the PC headquarters not to surrender but merely to report the incident. This did not show accused's desire to own the responsibility for the crime.
j. ***People v Canoy.*** The Chief of Police placed the accused under arrest in his employer's home. It does not appear that it was the idea of the accused to send for the police for the purpose of giving himself up.
k. ***People v Ribinal.*** Accused was arrested in his boarding house and upon being caught, pretended to say that he was on his way to the municipal building to surrender to authorities.

►There is no mitigating circumstance of voluntary surrender when the defendant was in fact arrested. *(People v Conwi)*

⇨ ***People v Parana.*** Having the opportunity to escape, accused voluntarily waited for the agents of the authorities and gave himself up, he is entitled to voluntary surrender, even if he was placed under arrest then and there.
⇨ ***People v Babiera.*** Accused helped in carrying his victim to the hospital where he was disarmed and arrested, it is tantamount to voluntary surrender.

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►The law does not require that the surrender be prior to the order of arrest. The RPC does not make any distinction among the various moments when the surrender may occur.

- ⇨ ***Rivers v Court of Appeals.*** Accused presented himself in the municipal building to post bond for his temporary release. The fact that the order of arrest had already been issued is not bar to the application of mitigating circumstance of voluntary surrender.
- ⇨ ***De Vera v De Vera.*** Immediately upon learning that a warrant for his arrest was issued, and without the same having been served on him, the accused surrendered to the police. Accused may still be entitled to voluntary surrender.

►Surrender of weapons cannot be equated with voluntary surrender. Voluntary surrender does not simply mean non-flight.

a. ***People v Jose de Ramos.*** After the incident, accused reported it to the councilor. Then, he went to the Chief of Police to whom he relayed what happened and surrendered the bolo used in the crime. No mitigating circumstance.
b. ***People v Palo.*** Accused merely surrendered the gun used in the killing. No voluntary surrender.
c. ***People v Canoy.*** Accused did not escape or hide. In fact, he accompanied the Chief of Police to the scene of the crime without surrendering to him and admitting complicity in the killing. It does not matter if accused never avoided arrest and never hid or fled. What the law considers is the voluntary surrender before arrest. No voluntary surrender.
d. ***People v Rogales.*** Accused went to the PC headquarters to surrender but merely to report the incident. He never evinced any desire to own the responsibility for the killing. No voluntary surrender.

►The surrender must be made to a person in authority or his agent

PERSON IN AUTHORITY. One directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws whether as an individual or as a member of some court or governmental corporation, board or commission.

- **Barrio captian** and **barangay chairman** are also persons in authority.

AGENT OF A PERSON IN AUTHORITY. A person who, by direct provision of the law, or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority.

►The surrender must be by reason of the commission of the crime for which defendant is prosecuted.

a. Accused surrendered as a Huk to take advantage of the amnesty, but the crime he was prosecuted for was different and separate from rebellion. His surrender is not mitigating.

►Surrender through an intermediary (through the mediation of parent) **was mitigating. *(People v Dela Cruz)***

►Intention to surrender, without actually surrendering, is not mitigating.

VOLUNTARY CONFESSION OF GUILT BEFORE THE COURT PRIOR TO THE PRESENTATION OF EVIDENCE FOR THE PROSECUTION

REQUISITES, PLEAS OF GUILTY

1. **That the offender spontaneously confessed his guilt**
2. **That the confession of guilt was made in open court, that is, before the competent court that is to try the case**
3. **That the confession of guilt was made prior to the presentation of evidence for the prosecution**

1. **That the offender spontaneously confessed his guilt**
2. **That the confession of guilt was made in open court, that is, before the competent court that is to try the case**

- **Extrajudicial confession** made by the accused is not voluntary confession since confession was made outside the court.

3. **That the confession of guilt was made prior to the presentation of evidence for the prosecution**

- Plea of guilty must be made prior to the presentation of the evidence for the prosecution. Plea of guilty made during or after presentation of evidence by prosecution is not mitigating.
- The plea of guilty must be made before the trial begins. A plea of guilty made after the arraignment and after trial had begun does not entitle the accused a mitigating circumstance.

  - ⇨ ***People v Coronel.*** Accused pleaded guilty only during the continuation of the trial. Death penalty imposed was changed to life imprisonment because of plea of guilty.
  - ⇨ ***People v Ortiz.*** Trial had already began for original information for murder and frustrated murder. Due to willingness of accused to cooperate, the information was amended by the prosecution to homicide and frustrated homicide. No evidence was presented in connection with the new information. Accused pleaded guilty. Mitigating.

- Plea of guilty must be made at the first opportunity; please of guilty on **appeal** is not mitigating *(e.g. in an offense cognizable by the MTC, plea of guilty must be made at MTC and not upon appeal to RTC)*

  - ⇨ Plea in the preliminary investigation is no plea at all.
    a. ***People v Oandasan.*** Offense is cognizable by CFI. Accused pleaded not guilty before the MTC upon arraignment at its preliminary investigation. When the case was elevated to CFI, accused pleaded guilty. Plea of not guilty during the arraignment at the preliminary investigation is not a plea at all. Plea of guilty at the CFI (the competent court for the offense) was mitigating
    b. During arraignment, accused pleaded not guilty. Prior to presentation of evidence of the prosecution, he withdrew his original pleading and pleaded guilty. Mitigating circumstance is present.

- **A conditional plea of guilty is not mitigating.**
  a. ***People v Moro Sabilul.*** An accused may not enter a conditional plea of guilty in the

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sense that he admits his guilt provided that a certain penalty be imposed upon him.

- **Plea of guilty to a lesser offense is not mitigating.** To be voluntary, the plea of guilty must be to the offense charged.
  - ⇨ ***People v Ong.*** Accused pleaded guilty but denied that there evident premeditation attended the crime. Prosecution failed to prove evident premeditation. Mitigating.
  - ⇨ **Plea of guilty to the offense charged in the amended information lesser than that charged in the original information is mitigating.**
    a. ***People v Intal.*** Originally charged with double murder accused moved to withdraw his plea of not guilty to be substituted with a guilty plea to the lesser crime of double homicide. Prosecution moved to amend information. Mitigating.

►When the accused is charged with a grave offense, the court should take his testimony in spite of his plea of guilty. Where the accused pleads guilty to a capital offense, the court shall conduct a **searching inquiry** into the **voluntariness and full comprehension of the consequences of his plea** and shall require the **prosecution to prove his guild and the precise degree of culpability**.

►Plea of guilty is NOT mitigating in culpable felonies and in crimes punished by special laws.

8. PHYSICAL DEFECT OF OFFENDER

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.

BASIS. The offender is suffering from physical defect, which restricts one's means of action, defense, or communication with one's fellow being, does not have complete freedom of action and, therefore, there is a diminution of the element of voluntariness

►There is a mitigating circumstance where accused suffers a physical defect that limits his means to act, defend himself, or communicate with his fellow beings.

a. Deaf
b. Dumb
c. Blind
d. Armless
e. Cripple
f. Stutter

- Being educated or uneducated does not matter, the paragraph does not distinguish

9. ILLNESS OF THE OFFENDER

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.

BASIS. Diminution of intelligence and intent

REQUISITES

1. That the illness of the offender must diminish the exercise of his willpower
2. That such illness **should not deprive** the offender of consciousness of his acts
   - ►because, when the offender **completely** lost the exercise of will-power, I may be an exempting circumstance.
   - A deceased mind **not amounting to insanity** may give place to mitigation.

EXAMPLES

a. ***People b Balneg.*** The mistaken belief that the killing of a witch was for the public good
b. ***People v Amit.*** Mild behavior disorder. Illness of the nerves or moral faculty.
c. ***People v Formigones.*** Feeble-mindedness
d. ***People v Antonio.*** Schizzo-affective disorder or psychosis

10. SIMILAR OR ANALOGOUS CIRCUMSTANCES

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

►The court is authorized to **consider in favor of the accused** any other circumstance of a **similar nature and analogous** to those mention is **paragraphs 1 to 9**

EXAMPLES

MITIGATING CIRCUMSTANCE	ANALOUGOUS CIRCUMSTANCES	CASE
Over 70 years of age	**Over 60 years old with failing sight**	People v Reantillo and Ruiz
Vindication of a Grave Offense	**Outraged feeling of owner of animal taken for ransom**	People v Monaga
Passion and obfuscation	**Outraged feeling of a creditor**	Creditor killed his debtor who tried to escape and refused to pay his debt; People v Merenillo
	Impulse of jealous feeling	Wife committed slander when she charged complainant with being the her husband's concubine and it was later found out that complainant was a virgin; People v Ubengen, CA
	Espirit de Corps (common loyalty shared	Many soldiers took part in the killing as they were responding to the

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	by members of a particular group) **Mass Psychology**	call and appeal of their lieutenant. Deceased summarily ejected certain soldiers from the dance hall; soldier considerd this a grave insult gainst their organizatio; People v Villamora
Illness that diminishes the exercised of will power	**Manifestations of Battered Wife Syndrome**	People v Genosa
Voluntary Surrender	**Voluntary restitution of stolen property**	People v Luntao
	Immediately reimbursing the amount malversed	Restitution even before prosecution does not extinguish liability; damage is not an element of malversation; Perez v People
Plea of Guilty	**Act of testifying for the prosecution without previous discharge**	People v Navasca
Incomplete justifying circumstance of State of Necessity	**Extreme Poverty and of economic difficulties**	Due to poverty, accused was forced to steal two sacks of paper and sell it in a cheaper price; People v Macbul ⇨ **Applies only to crimes against property but not a crime of violence, e.g. murder** ⇨ **Not mitigating when accused impoverished himself and lost occupation by committing crimes and not driven to crime due to poverty**

NON-EXAMPLES, NOT MITIGATING

a. ***People v Gona.*** Killing the wrong man
b. ***People v Canja.*** In parricide, that the husband was unworthy or was a rascal, bully and bad
c. ***Peole v Fajardo.*** That the victim was a bad or quarrelsome person
d. ***People v Dy Pol.*** In falsification, accused invoked the lack of irreparable damage
e. ***People v Rabuya.*** Not resisting arrest without the slightest attempt to resist is **not** analogous to voluntary surrender
f. ***People v Salazar.*** Condition of running amuck even if it is an age-old and deeply-rooted cult among the Moros

ARTICLE 62. Effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency. - Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

►All mitigating circumstances are personal to the offenders.

MITIGATING CIRCUMSTANCES PERSONAL TO THE OFFENDERS serves to mitigate the liability of principals, accomplice and accessories as to whom they are attendant

a. **From the moral attributes of the offender**
   - A and B killed C. A acted under an impulse which produced obfuscation. The circumstance arose from the moral attribute of A and shall mitigate the liability of A only. It shall not mitigate the liability of B.
b. **From his private relations with the offended party**
   - Father committed robbery against Son, while Stranger bought the property despite knowledge of the crime. The circumstance arose from the private relation of Father and Son and shall mitigate liability of Father only, not that of Stranger.
c. **From any other personal cause**
   - Minor acting with discernment inflicted serious physical injuries on Victim. Adult, seeing what Minor did, kicked Victim. Minority will mitigate liability of Minor but not of Adult.

CIRCUMSTANCES WHICH ARE NEITHER EXEMPTING NOR MITIGATING

a. Mistake in the blow or aberatio ictus
b. Mistake in identity
c. Entrapment of the accused
d. The accused is over 18; age is neither exempting nor mitigating
e. Performance of righteous action no matter how meritorious it may be

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A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

BASIS. Paragraphs 2 and 3 are both based on the **complete absence of intelligence**.

STAGE OF LIFE	AGE	LIABILITY
Age of Absolute irresponsibility (infancy)	15 y/o and under	Exempting circumstance
Age of Conditional responsibility	Over 15 but under 18 y/o	
	a. Acted **without** discernment	Exempting circumstance
Age of Mitigated responsibility	b. Acted **with** discernment	Privileged mitigating (penalty is reduced by degree lower than that imposed) Sentence suspended
Age of Full responsibility	18 y/o or over	Full criminal responsibility
Age of Mitigated responsibility (Senility)	70 y/o or over	Mitigating circumstance (no imposition of death penalty; if already imposed, execution of death penalty is suspended and commuted)

or took the loot to another town to avo discovery, he manifested discernment.

2. **Conduct of the Offender**
   a. ***Madali v Peope.*** Minor punched the body ar head of the victim with a brass knuckle arour his fist. His cohorts hanged the victim's body a nearby tree. They warned a witness not reveal their act to anyone or else they will him.

DISCERNMENT V INTENT

DISCERNMENT	INTENT
Relates to the moral significance that a person ascribed the act	Refers to the desired act o the person

►A person may not **intend** to shoot another but may be **aware the consequence** of his negligent act which may cause injury t the same person in negligently handing an air rifle.

►Burden to prove age is with the person alleging the age of the CICL. If age of the child is contested prior to filing of information in court, a case for determination of age under summary proceeding may be filed with the Family Court.

- **Determination of Age**
  1. Best evidence: an original or certified true copy of the certificate of live birth;
  2. Similar authentic documents
     a. baptismal certificates
     b. school records or
     c. any pertinent document that shows the date of birth of the child
  3. testimony of the child, testimony of a member of the family related to the child by affinity or consanguinity who is qualified to testify on matters respecting pedigree, testimony of other persons, the physical appearance of the child and other evidence

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3. ACCIDENT WITHOUT FAULT OR INTENTION CAUSING IT

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

BASIS. Lack of **negligence** and **intent**. Under this condition, a person does not commit either an intentional or culpable felony.

ELEMENTS

1. **A person is performing a lawful act**
   - ***People v Galacgac.*** Art 12 Par 4 cannot be invoked by accused who illegally discharged his firearm in a thickly populated place when it is prohibited and penalized by Art 155 of RPC
   - ***People v Vitug.*** Strking another with a gun in self-defense, even if it fires and seriously injured the assailant, is a lawful act. The injury was caused by accident.
   - ***People v Reyta.*** The act of drawing a weapon in the course of a quarrel, not being in self-defense, is unlawful (light thread, Art 285 RPC). Accident cannot be invoked as ground for exemption.

2. **With due care**
3. **He causes an injury to another by mere accident**
4. **Without fault or intention of causing it**
   - ***People v San Juan.*** Accident as exempting circumstance cannot be applied when accused is guilty of negligence.

ACCIDENT. Something that happens outside the sway of our will, and although it comes about through some act of our will, lies beyond the bounds of humanly foreseeable consequences.

- **Accident presupposes the lack of intention to commit the wrong done.**
- **Accident and negligence are intrinsically contradictory, once cannot exist with the other.**

⇨ If the consequences are plainly foreseeab… case of **negligence**.

a. ***People v Nocum.*** Accused tried to stop two person…

NON-EXAMPLES, ACCIDENT NOT APPRECIATED

a. ***People v Taylaran.*** Repeated blows negate the claim … wounding by mere accident.
b. ***People v Reyes.*** Accidental shooting is negated b… threatening words preceding it and still aiming the gun … the prostrate body of the victim, instead of immediate… helping him.

4. ACTING UNDER COMPULSION OF AN IRRESISTIBLE FORCE

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

1. Any person who act under the compulsion of irresistible force.

BASIS. Complete absence of freedom.

►Presupposes that a person is compelled **by means of force … violence** to commit a crime

ELEMENTS, ACTING UNDER THE COMPULSION OF AN IRRESISTAB… FORCE

1. **That the compulsion is by means of physical force**
2. **That the physical force must be irresistible**
3. **That the physical force must come from a third person**

- The force must be irresistible to reduce the actor to … mere instrument who acts not only without will b… against his will.

- Duress, force, fear or intimidation must be presen… imminent and impending and of such nature as … induce a well-grounded apprehension of death … serious bodily harm if the act is not done.

  a. ***US v Caballeros.*** Accused was at the plantatio… gathering bananas. Upon hearing the shooting, h… ran but was seen by the leader of the band. Th… called him and striking him with the butts of th… guns, compelled him to bury the bodies. Accuse… acted under the compulsion of irresistible force.

fighting by shooting twice in the air. The bout continued so he fired another shot at the ground. The bullet ricocheted and killed a bystander. He is guilty of homicide. He willfully discharged his gun without taking the precautions, the district was populated and the likelihood that the bullet would glance over the pavement.

EXAMPLES, ACCIDENT

b. ***US v Tañedo.*** Accused shot a wild chicken, but the slug recoiled, and struck and killed a tenant. The tenant was not in the direction at which the accused fired his gun. It was not foreseeable that the slug would recoil after hitting the wild chicken. There is no criminal liability.
c. ***US v Tayontong.*** A chauffer ran over a man who suddenly and unexpectedly crossed the street because it was physically impossible to avoid hitting him. Chauffer was driving on the proper side of the road at a moderate speed. He was not criminally liable.
d. ***People v Ayaya.*** When the husband was about to push the door and crush the head of the son, the wife jabbed the husband with the point of the umbrella to prevent him from crushing the son's head. Husband's injury was a mere accident.

b. ***People v Sarip.*** Accused, equipped with a rifl claimed that he was threatened with a gun by th mastermind. There is no compulsion or irresistib force.

- **Irresistible force can never consist in an impulse o passion or obfuscation**. It must be of an extraneous forc coming from a third person.

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5. ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

2. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

BASIS. Complete absence of freedom.
Actus me invito factus non est meus actus. *An act done by me against my will is not my act.*

►Presupposes that a person is compelled to commit a crime by another; the compulsion is **by means of intimidation or threat,** not force or violence.

ELEMENTS, ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR *(People v Petenia)*

1. **Existence of an uncontrollable fear**
2. **The fear must be real and imminent**
3. **The fear of an injury is greater than or at least equal to that committed**
4. **That if promises an evil of such gravity and imminence that he ordinary man would have succumbed to it *(US v Elicanal)***

- ***US v Exaltacion.*** Accused were compelled under fear of death to swear allegiance to the Katipunan whose purpose was to overthrow the government by force of arms. Accused are not liable for rebellion because they joined under the impulse of uncontrollable fear of an equal or greater injury.

►**Duress** as a valid defense should be based on real, imminent or reasonable fear for one's life or limb, and should not speculative, fanciful or remote fear.

- A threat of future injury is not enough. Compulsion must leave no opportunity to the accused for escape or self-defense in equal combat.
- **EXCEPTION: Duress is unavailing where the accused had the opportunity**
  1. **to run away if he had wanted to or**
  2. **to resist any possible aggression because he was also armed.**

a. ***People v Parulan.*** The accused had several opportunities to leave the gang that intimidated him into committing a crime to kidnap the victim. Defense that he acted under intimidation is untenable.

b. ***People v Vargas.*** Accused was armed with a rifle, while the leader who threatened him to join the band was armed with a revolver only. He could have resisted the leader. Accused did not act under impulse of an uncontrollable fear.

c. ***People v Rogado.*** Accused was armed with a carbine which he could use to protect himself from his superiors. Victim was brought to a secluded place away from the superior, accused could have escaped. Accused carried out the order to kill victim with a blow that almost severed the head from the body. He did not act under pressure of fe

d. ***People v Ragala.*** Under the Hukbalahap, accused told his companions to dig a grave, and he also walked behind the Hukbalahap killers to the place of execution of

e. ***People v Bagalawis.*** Nothing will excuse the a of joining an enemy to commit treason but th fear of immediate death.

- Speculative, fanciful and remote fear is **n** uncontrollable fear

a. ***People v Moreno.*** Accused executed the victi under the order of Major Sasaki. When accuse refused to comply with the order, the Capto said "You have to comply… otherwise, yo have to come along with us." That threat is n of such serious character and imminence.

b. ***People v Fernando.*** Mere fear of a member the Huk movement to disobey or refuse to car out orders of the organization, in the absenc of proof of actual physical or moral compulsio to act, is not sufficient to exempt accused fro criminal liability.

IRRESISTABLE FORCE v UNCONTROLLABLE FEAR

IRRESISTABLE FORCE	UNCONTROLLABLE FEAR
The offender uses violence or physical force to compel another person to commit a crime	The offender employs intimidation or threat in compelling another to commit a crime

6. INSUPERABLE OR LAWFUL CAUSES

ARTICLE 12. Circumstances which exempt from criminal liability.
- the following are exempt from criminal liability:

7. Any person who fails to perform an act required by law, when prevented by some lawful insuperable cause.

BASIS. Excuses accused because he acts without **intent**, the thi condition of voluntariness in an intentional felony

ELEMENTS, INSUPERABLE OR LAWFUL CAUSES

1. **That an ACT IS REQUIRED BY LAW TO BE DONE**
2. **That a person FAILS TO PERFORM such act**
3. **That his failure to perform such act was DUE TO SOM LAWFUL OR INSUPERABLE CAUSES**

- **Prevented by some LAWFUL CAUSE**

a. Article 116 RPC requires a Filipino citizen who knov of a conspiracy against the Government to repo the same to the governor or fiscal of the provinc where he resides. A priest who do not disclose confession to commit conspiracy against th Government is exempt from criminal liability.

- **Prevented by some INSUPERABLE CAUSE**

a. ***US v Vicentillo.*** Under the law, person arrested mu be delivered to the nearest judicial authority with 18 hours, otherwise, the public officer will be liab for arbitrary detention. Municipal preside detained the offended party for three da because to take him to the nearest justice of th peace required journey for three days by boat there was no other means of transportation.

b. ***People v Bandian.*** Mother was overcome by seve dizziness and extreme debility at the time childbirth and left the child in a thicker where it die

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the victim. Accused acted under the impulse of uncontrollable fear.

Mother is not liable for infanticide because it wa physically impossible for her to take home the chil

ABSOLUTORY CAUSES

ABSOLUTORY CAUSES. Those where the act committed is a crime but for reasons of public policy and sentiment, there is no penalty imposed.

A. JUSTIFYING CIRCUMSTANCES
B. EXEMPTING CIRCUMSTANCES
C. OTHER ABSOLUTORY CAUSES
1. **SPONTANEOUS DESISTANCE DURING THE ATTEMPTED STAGE**

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of rendering some service to humanity or justice, nor anyone who shall enter cafes, taverns, inn and oth public houses, while the same are open.

8. **Article 332. Persons exempt from criminal liability. - N criminal, but only civil liability, shall result from th commission of the crime of theft, swindling or maliciou mischief committed or caused mutually by the followin persons:**

   1) Spouses, ascendants and descendants, a relatives by affinity in the same line.

STAGE

Article 6. The spontaneous desistance of the person who commenced the commission of a felony before he could perform all the acts of execution (attempted stage), and no crime under another provision of the RPC or other penal law is committed

2. **LIGHT FELONY IS ONLY ATTEMPTED/FRUSTRATED, AND IS NOT AGAINST PERSONS OR PROPERTY.**
Article 7. When light felonies are punishable. - Light felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

3. **ACCESSORY IS A RELATIVE TO THE PRINCIPAL**
Article 20. Accessories who are exempt from criminal liability. - The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

4. **Article 19, par 1.** Considered accessory by taking part subsequent to commission of the crime "By profiting themselves or assisting the offender to profit by the effects of the crime."

5. **LEGAL GROUNDS FOR ARBITRARY DETENTION**
Article 124, last paragraph. The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

6. **SLIGHT OR LESS SERIOUS INJURIES INFLICTED BY A PERSON WHO SURPRISED HIS SPOUSE OR DAUGHTER IN THE ACT OF SEXUAL INTERCOURSE WITH ANOTHER PERSON**
Article 247. Death or physical injuries inflicted under exceptional circumstances. - Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

7. **LEGAL GROUNDS FOR TRESPASS**
Article 280, par. 3. The provisions of this article (on trespass to dwelling) shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose

2) The widowed spouse with respect to th property which belonged to the decease spouse before the same shall have passed int the possession of another; and
3) Brothers and sisters and brothers-in-law an sisters-in-law, if living together.

The exemption established by this article shall not b applicable to strangers participating in the commissio of the crime.

9. **MARRIAGE OF THE OFFENDER AND OFFENDED PARTY RAPE, ABDUCTION, SEDUCTION, OR ACTS LASCIVIOUSNESS**
Article 344. Par 4. In cases of seduction, abduction, ac of lasciviousness and rape, the marriage of the offend with the offended party shall extinguish the crimin action or remit the penalty already imposed upon hir The provisions of this paragraph shall also be applicab to the co-principals, accomplices and accessories aft the fact of the above-mentioned crimes.

10. **INSTIGATION** is an absolutory cause.
⇨ **ENTRAPMENT** is not an absolutory cause.

BASIS. A sound public policy requires that the courts sh condemn **instigation** by directing the acquittal of th accused.

a. ***US v Phelps.*** A person instigated to smoke opium b the police officer himself is not criminally liable.
b. ***People v Lia Chua.*** Pretending to have a understanding with the Collector of Customs, Juc Samson smoothened the way for the introduction prohibited drugs **after** the accused had alread planned its importation and ordered for the sa drug. Juan Samson did not induce or instigate th accused. It was a trap set to catch a criminal.

INSTIGATION	ENTRAPMENT
Instigator practically introduces the would-be accused into the commission of the offense and himself becomes co-principal	The ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan
The law enforcer conceives the comission of the crime and suggests to the accused who adopts the idea and carries it into execution.	**The means originates from the mind of the criminal. The idea and resolve come from him.**
Absolutory cause	**NOT** absolutory cause
Accused will be acquitted	**NO** a bar against accused's prosecution and conviction

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Must be made by public officers or private detectives	

►If instigation was made by a **private individual** and not performing public function, both he ***(principal by induction)*** and the one induced ***(principal by direct participation)*** are criminally liable.

COMPLETE DEFENSES IN CRIMINAL CASES

1. **ANY OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IS NOT PROVED BY THE PROSECUTION AND THE ELEMENTS PROVED DO NOT CONSTITUTE ANY CRIME**

2. **THE ACT OF THE ACCUSED FALLS UNDER ANY OF THE JUSTIFYING CIRCUMSTANCES.** (Article 11)

3. **THE CASE OF THE ACCUSED FALLS UNDER ANY OF THE EXEMPTING CIRCUMSTANCES** (Article 12)

4. **THE CASE IS COVERED BY ANY OF THE ABSOLUTORY CAUSES**

5. **GUILT OF THE ACCUSED WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT**

6. **PRESCRIPTION OF CRIMES** (Article 89)

Article 89. How criminal liability is totally ex
Criminal liability is totally extinguished:

1) By the death of the convict, as to the personal

offended party shall extinguish the criminal action remit the penalty already imposed upon him. Th provisions of this paragraph shall also be applicable the co-principals, accomplices and accessories after th fact of the above-mentioned crimes.

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penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

2) *By service of the sentence;*
3) *By amnesty, which completely extinguishes the penalty and all its effects;*
4) *By absolute pardon;*
5) ***By prescription of the crime;***
6) *By prescription of the penalty;*
7) *By the marriage of the offended woman, as provided in Article 344 of this Code.*

7. **PARDON BY THE OFFENDED PARTY BEFORE THE INSTITUTION OF CRIMINAL ACTION IN CRIME AGAINST CHASTITY** (Article 344)

Article 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. *- The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.*

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the

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The Revised Penal Code Book 1
by Luis B. Reyes

CHAPTER THREE
CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

Article 13. Mitigating circumstances. - The following are mitigating circumstances;

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.
2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.
3. That the offender had no intention to commit so grave a wrong as that committed.
4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.
5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.
6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.
7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;
8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.
9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.
10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

MITIGATING CIRCUMSTANCES. Those which, if present in the commission of the crime, do not entirely free the [illegible] from criminal liability, but serve only to reduce the penalty

- **BASIS.** Based on the diminution of either freedom of action, intelligence, or intent, or on the lesser perversity of the offender.

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2. **Privileged Mitigating Circumstances**
   a. **Article 68. Penalty to be imposed upon a perso under eighteen years of age.** - When the offender a minor under eighteen years and his case is or coming under the provisions of the paragraphs ne to the last of Article 80 of this Code, the followin rules shall be observed:

      1) Upon a person under fifteen but over nine yea of age, who is not exempted from liability b reason of the court having declared that h acted with discernment, a discretiona penalty shall be imposed, but always lower b two degrees at least than that prescribed b law for the crime which he committed.

      2) Upon a person over fifteen and under eightee years of age the penalty next lower than th prescribed by law shall be imposed, but alwa in the proper period.

   b. **Article 69. Penalty to be imposed when the crim committed is not wholly excusable**. - A penalty lowe by one or two degrees than that prescribed by la shall be imposed if the deed is not wholly excusab by reason of the lack of some of the conditio required to justify the same or to exempt fro criminal liability in the several cases mentioned Article 11 and 12, **provided** that the majority of suc conditions be present. The courts shall impose th penalty in the period which may be deeme proper, in view of the number and nature of th conditions of exemption present or lacking.

   c. **Article 64 (5). Rules for the application of penalti which contain three periods.** - In cases in which th penalties prescribed by law contain three period whether it be a single divisible penalty or compose of three different penalties, each one of which forn a period in accordance with the provisions Articles 76 and 77, the court shall observe for th application of the penalty the following rule according to whether there are or are not mitigati or aggravating circumstances:

      5) When there are two or more mitigatin circumstances and no aggravatin circumstances are present, the court sh impose the penalty next lower to th prescribed by law, in the period that it ma deem applicable, according to the numb and nature of such circumstances.

   d. **PRIVILEGED MITIGATING CIRCUMSTANC**

- **Mitigating circumstances only reduce the penalty but do not change the nature of the crime**

CLASSES OF MITIGATING CIRCUMSTANCES

1. **Ordinary Mitigating Circumstances**
   - Those enumerated in subsections 1 to 10 of Article 13
   - Those mentioned in subsection 1 of Article 13 are ordinary mitigating circumstances, if Article 69, for instance, is no applicable.

     Article 13 (1). *Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.*

d. **PRIVILEGED MITIGATING CIRCUMSTANC**

APPLICABLE ONLY TO PARTICULAR CRIMES

1) Voluntary release of the person illegal detained within three days without th offender attaining his purpose and befo the institution of criminal action. (Art 26 par 3). The penalty is one degree lower.

2) Abandonment without justification of th spouse who committed adultery. (Art 33 par 3) The penalty is one degree lower.

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ORDINARY MITIGATING v PRIVILEGED MITIGATING

ORDINARY MITIGATING	PRIVILEGED MITIGATING
Susceptible of being offset by any aggravating circumstance	Cannot be offset by aggravating circumstance
If not offset by an aggravating circumstance, produces only the effect of applying the penalty provided by law for the crime in its minimum period, in case of divisible penalty	Produces the effect of imposing upon the offender the penalty lower by one or two degrees than that provided by law for the crime

MITIGATING CIRCUMSTANCES

1. **INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE**
2. **MINORITTY (15-18 Y/O WITH DISCERNMENT), OR SENILITY (OVER 70 Y/O)**
3. **NO INTENTION TO COMMIT SO GRAVE A WRONG (PRAETER INTENTIONEM)**
4. **SUFFICENT THREAT OR PROVOCATION**
5. **VINDICATION OF GRAVE OFFENSE**
6. **PASSION AND OBFUSCATION**
7. **VOLUNTARY SURRENDER AND CONFESSION OF GUILT**
8. **PHYSICAL DEFECT OF OFFENDER**
9. **ILLNESS OF THE OFFENDER**
10. **SIMILAR OR ANALOGOUS CIRCUMSTANCES**

1. INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.

►When not all (but majority of) the elements of the followin justifying or exempting circumstances are present, they give plac to mitigation:

1. Self-defense (Art 11(1))
2. Defense of Relatives (Art 11(2))
3. Defense of Starnger (Art 11(3))
4. State of Necessity (Art 11(4))
5. Performance of Duty (Art11 (5))
6. Obedience to order of superior (Art 11(6)
7. Minority above 15 but below 18 years of age (RA 9344)
8. Causing injury by mere accident (Art 12 (4))
9. Uncontrollable fear (Art 12 (6))

*Article 12 paragraphs 1 and 2 cannot give place mitigation. The mental condition of a person is indivisibl no middle ground between sanity and insanity.

⇨ If offender is suffering from some illness whic diminishes the exercise of willpower, witho depriving him of consciousness of his acts, suc circumstance is considered mitigation und Article 13 par 9.

INCOMPLETE JUSTIFYING CIRCUMSTANCES

a. **INCOMPLETE SELF-DEFENSE, DEFENSE OF RELATIVES, AN DEFENSE OF STRANGER**
   - **Unlawful aggression must be present**, it being a indispensable requisite.
     1) Unlawful aggression + means employed is n reasonable + lack of provocation
     2) Unlawful aggression + reasonable necessity the means employed + gave provocation

b. **Incomplete justifying circumstances of AVOIDANCE O GREATER EVIL OR INJURY**
   - If any of the last two requisites is absent, mitigating
     1) (First) That the evil sought to be avoide actually exists + (Second) That the injury feare be greater than that done to avoid it;
     2) (First) That the evil sought to be avoide actually exists + (Third) That there be no oth practical and less harmful means of preventin it.

c. Incomplete justifying circumstance of PERFROMANCE O DUTY
   - ***People v Oanis.*** One of the two requisites must b present
     a) That the accused acted in the performance a duty or in the lawful exercise of a right office; or
     b) That the injury caused or offense committed b the necessary consequence of the du performance of such duty or the lawful exercis of such right

d. Incomplete justifying circumstance of OBEDIENCE TO A ORDER
   - **Requisite**
     a) Lawful Purpose
     b) Act in Obedience to an Order

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- ***People v Bernal.*** Only second requisite was present, SC granted mitigation. Roleda fired at the prisoner following the order of his sergeant, but the order was obviously illegal and unwarranted. Benting led his companions to believe that Pilones had killed not only a barrio lieutenant but also a comrade military police. This may have aroused in Roleda a feeling of resentment that may have impelled him to readily and without questioning follow the order of Sgt. Benting. Roleda was a subordinate of Sgt. Benting who gave the order, and while out on patrol, the soldiers were under the immediate command and control of Sgt. Benting.

INCOMPLETE EXEMPTING CIRCUMSTANCES

a. **Incomplete exempting circumstance of OVER 15 AND UNDER 18 YEARS OF AGE**
   - Two requisites/conditions must be pres
     a) That the offender is over 15 and under 18 years old, **AND (+)**
     b) That he acted **wit**h discernment

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DIVERSION. An alternative, child-appropriate process determining the responsibility and treatment of a child conflict with the law on the basis of his/her social, cultura economic, psychological or educational backgroun without resorting to formal court proceedings.

DIVERSION PROGRAM. The program that the child conflict with the law is required to undergo after he/sh is found responsible for an offense without resorting formal court proceedings.

SYSTEM OF DIVERSION

Where the imposable penalty is not more than six years imprisonment	The law enforcement office or Punong Barangay, assisted by local SWDO and LCPC Conduct mediation, family conferencing and conciliation, and where appropriate, adopt indigenous modes of conflict resolution
In victimless crimes	Local SWDO

b. **Incomplete exempting circumstance of ACCIDENT**
   - Requisites
     a) A person is performing a lawful act
     b) He causes injury to another by mere accident
     c) Without intention of causing it
   - Elements of the justifying circumstance **not** present
     a) Due care
     b) Without fault of causing it

   - Person must be performing a lawful act and without intention to cause injury, otherwise, he commits an intentional felony
   - **Article 365 which punishes felony by imprudence and negligence sets a penalty lower than that which punishes intentional felony; hence, mitigating**

c. **Incomplete exempting circumstance of UNCONTROLLABLE FEAR**
   - Either one of the two requisites must be present
     a) That the threat which cause the fear was of an evil greater than, or at least equal to, that which he was require to commit, **OR**
     b) That it promised an evil of such gravity and imminence that an ordinary person would have succumbed to it (uncontrollable)

2. MINORITY (15-18 Y/O WITH DISCERNMENT), OR SENILITY (OVER 70 Y/O)

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.

BASIS. Based on the diminution of intelligence which is a condition of voluntariness.

►When the offender is at least 15 but under 18 y/o, he may be exempt from criminal liability if he acted **WITHOUT discernment.**

⇨ If such offender acted **WITH** discernment, he shall undergo diversion programs under RA 9344.

in victimless crimes with imposable penalty is not more than six years imprisonment	Local SWDO Meet with the child and hi parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC
Where the imposable penalty exceeds six years imprisonment	Diversion measures may be resorted to only by the courts

►A CICL may undergo conferencing, mediation or conciliatio outside the criminal justice system or prior to his entry to the syster A **Contract of Diversion** may be entered into.

a. If during the conferencing, mediation or conciliation, th child voluntarily admits the commission of the act, diversion program shall be developed.
b. Diversion program shall be effective and binding accepted **in writing** by both parties concerned. Must b **signed by the parties and appropriate authorities.**
c. Diversion proceedings shall be completed **within 45 day** Period of prescription of the offense shall be suspende until the completion of the diversion proceedings.
d. Local SWDO shall supervise the implementation of th diversion program.
e. The child shall present himself to the compete authorities that imposed the diversion program **at lea once a month** for reporting and evaluation.
f. **Failure to comply with** the terms and conditions of th **contract of diversion** as certified by the local SWDO sha give the offended party the option to institute th appropriate legal action.
g. Period of prescription of the offense shall be suspende during the effectivity of the diversion program, but n exceeding two years.
h. **Diversion may be conducted at the Katarungan Pambarangay, the police investigation or the inquest preliminary investigation stage and at all level an phases of the proceedings including judicial level.**

►If the offense is not subject to diversion:

a. The Punong Barangay handling the case shall, with three days from the determination of the absence jurisdiction over the case or termination of the diversi proceeding as the case may be, forward the records the case to the law enforcement officer, prosecutor the appropriate court.

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b. In case a law enforcement officer handles the case, he shall forward the records of the case within the three days to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation/
c. **The document transmitting said records shall display the word "CHILD" in bold letters.**

►Senility or that the offender is over 70 y/o is only a generic mitigating circumstance.

- Prior to the enactment of RA 9346 (prohibiting death penalty), there were two cases where senility had the effect of a privileged mitigating circumstance:
  1) When the offense is punishable by death, that death penalty shall not be imposed
  2) When the death penalty is already imposed, it shall be suspended and commuted.
- The death penalty will be lowered to life imprisonment (reclusion perpetua).

3. NO INTENTION TO COMMIT SO GRAVE A WRONG (PRAETER INTENTIONEM)

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

3. That the offender had no intention to commit so grave a wrong as that committed.

BASIS. Intent, which is an element of voluntariness in intentional felonies, is diminished

►Take into account only when it is proven that there is a **notable** and **evident disproportion** between the means employed to execute the criminal act and its consequences.

APPLICATION OF ART 13 PAR 3

a. Applicable only to **offenses resulting in Phys material harm**
   ⇨ Does **NOT** apply in **slander, defamation**
   ⇨ Appreciated in **Malversation of Public Funds**

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medical treatment. Those who attended to victim did n know how to stop or control in time the victim hemorrhage.

c. ***People v Ural.*** Policeman boxed deceased detentio prisoner inside the jail. Deceased collapsed because the fistic blow. Accused stepped on the body and le He returned with a bottle, poured its content to th deceased and ignited it. **Held:** It is manifest from th proven facts that appellant Ural had no intent to Napola. His design was only to maltreat him may b because in his drunken condition he was making nuisance of himself inside the detention cell. When Ur realized the fearful consequences of his felonious act, h allowed Napola to secure medical treatment at th municipal dispensary.

►In Article 13 Par 3, it is the intention of the offender **at the mome when he is committing the crime** that is considered, **NOT** h intention during the planning stage.

HOW INTENTION IS PROVEN

1. **Intention, being an internal state, must be judged b external acts.**
   a. The fact that the blow was or was not aimed a vital part of the body
   b. ***US v Mendac.*** By hitting the victim in th abdomen, accused has a definite an perverse intention of producing the injury.
   c. ***People v Ural.*** After realizing his crime, accuse allowed the victim to secure medical treatme
   d. ***US v Fritzgerald.*** By using a revolver which sufficient means to kill, intent to kill is presume
   e. ***People v Amit.*** Accused was 25 who tried rape victim, 57. When victim resisted, accuse boxed her, held her on the neck and pressed down while she was lying on her back and h was on top of her. The acts were sufficient produce the death of victim.
   f. ***People v Orongan.*** Accused used a six-inc knife to stab victim. He even attempted second stab. Art 13 Par 3 does not apply.

b. Appreciated in **murder qualified by circumstances** based on manner of commission, but not on state of mind of accused
   ⇨ Does not apply in murder **qualified by treachery**

c. **LACK OF INTENT TO KILL,** appreciated in crimes against persons when the victim dies
   ⇨ Does not apply in **Physical Injuries**

d. Does **NOT** apply in **felonies by negligence** (since in *culpa*, intent is replaced by negligence, imprudence, lack of foresight or lack of skills)

e. Not applicable in **Unintentional Abortion**.
   ⇨ ***People v Falmeño.*** Art 13 par 3 was applied when accused having intended at the most to maltreat the complainant only, pulled her hair, causing her to fall and caused the fetus to fall from her womb.

EXAMPLES, WHEN INTENT IS PRESENT/ PROVEN

a. ***People v Rabao.*** Husband punched his wife in the abdomen causing the rapture of her hypertrophied spleen from which she died.
b. ***US v Bertucio.*** Accused gave a single blow at the right arm of the victim. Victim died due to neglect and lack of

2. **The weapon used, the part of the body injured, the injur inflicted, and the manner it is inflicted may show that th accused intended the wrong committed.**
   a. ***People v Braña.*** Inflicting five stab wounds rapid succession negates pretense of lack intention to cause so serious an injury.
   b. ***People v Abueng.*** In robbery with homicid where it has not been proven that in forci entrance through the door, accused were n aware that the deceased was behind the do and would be hurt.

4. SUFFICENT THREAT OR PROVOCATION

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

BASIS. Diminution of intelligence and intent

PROVOCATION. Any unjust or improper conduct or act of th offended party, capable of exciting, inciting, or irritating any on

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REQUISITES, PROVCATION

1. **That the provocation must be sufficient**
2. **That it must originate from the offended party; and**
3. **That the provocation must be immediate to the act, i.e. to the commission of the crime by the person who is provoked**

1. That the provocation must be sufficient

- **Sufficient** means adequate to excite a person to commit the wrong and must accordingly be proportionate to its gravity
- Depends upon the act constituting the provocation, the social standing of the person provoked, the place and the time when the provocation is made
- **EXAMPLES, SUFFIFICENT PROVOCATION**
  a. ***US v Carrero.*** The victim, a laborer, left his place in the line to receive their wages and forced his way into the files. Accused foreman ordered him out but he persisted. Foreman gave him a blow. When the aggression is in retaliation for an insult, injury, or threat, the offender cannot claim self-defense but at most, he can be given the provocation as mitigating circumstance.
  b. ***US v Firmo.*** Deceased abused and ill-treated the accused by kicking and cursing him.
  c. ***People v Marquez.*** While in his house, the accused saw an unknown person jumping out of his window and his wife begged for pardon on her knees. He killed his wife.
  d. ***US v Cortes.*** In a challenge to fight, where the deceased insulted the accused, there is no self-defense but there is provocation.
     ⇨ ***US v Mandac.*** Deceased challenged accused. They were prevented by other people from fighting. Accused sought deceased in their house. No provocation.
  e. ***People v Manansala.*** Victim hit the accused on the eye with his fist before the fight.
  f. ***US v Firmo.*** The accused who was intoxicated, abused the accused by kicking and cursing him. Accused stabbed victim.
  g. ***People v Macariola.*** Victim kicked accused on the chest prior to the stabbing.
  h. ***Romera v People.*** Thrusting his bolo to accused, threatening to kill him and hacking the bamboo walls of his house.

- **EXAMPLES, PROVOCATION NOT SUFFICIENT**
  a. ***People v Laude.*** Victim asked accused for explanation for his derogatory remarks against certain ladies.
  b. ***People v Nabora.*** Victim pointed his finger at the accused, asked him what he was doing at there, and said "Don't you know we are watching for honeymooners here?"
  c. ***US v Abijan.*** Deceased (public officer) ordered the arrest of the accused for misdemeanor. Performance of a duty is not a source of provocation.
  d. ***People v Court of Appeals, GR 103*** of horns, cutting of lanes or overtaking are not sufficient provocation.

3. That the provocation must be immediate to the act, i.e to the commission of the crime by the person who provoked

- ***People v Alconga.*** Provocation made by th deceased in the first stage of the fight is **NOT** mitigating circumstance when the accused kille him after he had fled.
- **Between the provocation by the victim and th commission of the crime by the person provoked accused, there should NOT be an interval of time.**

  Ratio: The law requires that thee provocatio "immediately preceded the act."

- **Threat immediately preceded the act**
- **Threat must NOT be offensive or positively strong** because if it is, the threat is an unlawful aggressio that will give rise to self-defense
- Vague threats are not sufficient
  a. Not sufficient: "If you do not agree, beware."
  b. Sufficient: "Follow us if you dare and we will k you."

SUFFICIENT PROVOCATION,
AS A REQUISITE OF INCOMPLETE SELF-DEFENSE v
AS A MITIGATING CIRCUMSTANCE

Incomplete Self-Defense	Mitigating Circumstance
Must be absent on the part of the person defending himself	Must be present on the part o the offended party/ accused

5. VINDICATION OF GRAVE OFFENSE

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.

BASIS. Based on the diminution of the conditions of voluntariness

REQUISITES, VINDICATION

1. **That there be a grave offense done to the one committin the felony, his spouse, ascendants, descendant legitimate, natural or adopted brothers or sisters, relatives by affinity within the same degrees;**
2. **That the felony is committed in vindication of such grav offense. A lapse of time is allowed between th vindication and the doing of the grave offense.**

1. That there be a grave offense done to the one committin the felony, his spouse, ascendants, descendant legitimate, natural or adopted brothers or sisters, relatives by affinity within the same degrees;

- **AGAINST THE PERSON OR HIS RELATIVES;**
  Relatives included
  1. Spouse
  2. Ascendants and descendants
  3. Legitimate, natural or adopted brothers sisters

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2. That it must originate from the offended party; and

- Ratio: The law says that the provocation is "on the part of the offended party."

4. Relative by affinity within the same degree
   - Relationship by affinity created b marriage survives the death of any of th spouses.

- **GRAVITY OF OFFENSE**
  - Must be decided by court, having in mind the social standing o fthe person, the place and the time when the insult was made***(People v Ruiz)***
  - **EXAMPLES**
    a. ***US v Ampar.*** During a fiesta, asked deceased for roast pig. In the presence of many guests, the deceased insulted the old man. When the deceased

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Provocation or threat must **immediately** precede the act	Vindication may be **proximate**
There be no interval of time between the provocation and crime	Allows interval of time between the grave offense and the crime
Concerns mere spite against one giving provocation	Concerns the honor of a person

was squatting down, the old man struck him with an axe on the head from behind. The **age** of the accused and the **place** were considered in determining gravity of the offense.

b. ***People v Rosel.*** Remark of the injured party before the guests that accused lived at the expense of his wife. Place taken into consideration.

c. ***People v Luna.*** Taking into account that American forces had just occupied Manila, accused considered the remark of offended party "You are a Japanese spy" as a grave offense. Time was considered.

d. ***US v Alcasid.*** Having found the victim in the act of committing an attempt against his wife

e. ***People v David.*** When injured party insulted the father of the accused contemptuously

2. That the felony is committed in vindication of such grave offense. A lapse of time is allowed between the vindication and the doing of the grave offense.

- The word immediate used in the English text is not the correct translation of the Spanish word ***"proxima."***
- ***People v Parana.*** Vindication was considered immediate when the influence of a grave offense, by reason of its gravity and the circumstances under which it was inflicted lasted until the crime was committed.
- **EXAMPLES, INTERVAL OF TIME NEGATING VINDICATION**
  a. ***People v Lumayag.*** Victim boxed accused several times in the face, and Victim was convicted for less serious physical injuries. Victim appealed. Pending appeal and approximately nine months after the boxing, Accused killed Victim.
  b. ***People v Benito.*** At 11:00 am in the presence of accused and his officemates, victim uttered "*Hindi ko alam na itong Civil Service pala ay istambayan ng magnanakaw.*" At 5:00 pm of the same day, accused killed the victim.
  c. ***People v Lopez.*** Where the accused heard the deceased say that the accused's daughter is a flight, and the accused stabbed the victim two months later.

PROVOCATION v VINDICATION

PROVOCATION	VINDICATION
Made directly only to the person committing the felony	Grave offense may be committed against the offender's relatives provided by law
The cause need not be a grave offense	Offended party/ victim must have done a **grave offense** to the offender or his relatives

►Law is more lenient in vindication since it concerns the **honor a person** which is an offense more worthy of consideration tha mere spite against one giving provocation or threat.

►Provocation should be proportionate to the damage caused b the act and adequate to stir one to its commission

- Example: ***People v Lopez.*** The remark attributed to th deceased that the daughter of the accused is a flirt do not warrant and justify the act of accused in slaying th victim.

►Vindication must be directed to the accused.

- ***People v Benito.*** Remark of the victim made in th presence of the accused and his workmates that th Civil Service is a hangout for thieves was general nature and not specifically directed to the accused. Th cannot be considered a grave offense against th accused.

►Vindication of a grave offense is incompatible with passion o obfuscation.

- They may be deemed to have attended the commissio of the crime **alternatively**
- Both mitigating circumstances **cannot co-exist**

6. PASSION AND OBFUSCATION

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

BASIS. Diminution of intelligence and intent of the accused

- When there are causes naturally producing in a perso powerful excitement, he loses his reason and self-contro thereby diminishing the exercise of his will power.

REQUISITES, PASSION OR OBFUSCATION

1. That there be an act, both unlawful and sufficient t produce such a condition of mind;
2. That said act which produced the obfuscation was not fo removed from the commission of the crime by considerate length of time, during which the perpetrato might recover his normal equanimity

1. That there be an act, both unlawful and sufficient t produce such a condition of mind;

- **The act of the offended party/ victim must b unlawful or unjust**
  a. ***People v Quijano.*** Common-law wife who le the common house and refused to go hom with accused was acting within her rights, an the accused common-law husband had n legitimate right to compel her to go with hi The act of the wife was insufficient to produc passion and obfuscation.

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b. ***US v Ortenio.*** Accused killed his wife when she visited her uncle. Accused was jealous and wife refused to return home until after the arrival of her uncle. Mitigating circumstance was present.
c. ***People v Ancheta.*** Upon seeing the person who stole his carabao, accused shot the thief. Mitigating circumstance was present.
d. ***People v Samonte Jr.*** Deceased created trouble during the wake which scandalized the mourners and offended the sensibilities of the grieving family. Mitigating circumstance was present.
e. ***People v Castro.*** Deceased boxed the accused's four year old son.

- **Exercise of a right or fulfillment of duty by the offended party/ victim is not a proper source of passion or obfuscation.**
  a. ***People v Noynay.*** Accused's carabao destroyed the sugarcane of the victim. Victim demanded payment. Accused refused to pay. When victim was about to take the carabao to the barrio lieutenant, accused killed him. Victim was clearly within his rights in what he did. Mitigating circumstances not pres
  b. ***People v Caliso.*** The mother had right to reprimand the accused, her child, for indecently converting the family's bedroom

- Passion and obfuscation need not be felt only seconds before the commission of the crime. **It ma build up and strengthen over time** until it can n longer be repressed and will ultimately motivate the commission of the crime.
  a. ***People v Oloverio.*** When the victim not on threatened to molest the accused's daught but also accused him in public of havin incestuous relations with his mother, insultin him in full view of his immediate superio passion may linger and build up over time.

- Passion or obfuscation may constitute a mitigatin circumstance only when the same arose from **lawf sentiments.**
  ⇨ Even if there is passion or obfuscation on th part of the offender, there is no mitigatin circumstance when the act committed is:
  1) in a spirit of **lawlessness;** or
  2) in a spirit of **revenge.**

  a. ***US v Hicks.*** Deceased separated from accuse after five years of **illicitly** living together, ar lived with another man. Accused kille deceased. Did not arise from legitima feelings.
  b. ***US v De la Cruz.*** Accused killed his commor law-wife after discovering in flagrante in carn communication with a commo

into a rendezvous of herself and her lover. Mitigating circumstance not present.

c. ***US v Taylor.*** Accused was making a disturbance on a public street and a policeman came to arrest him. Anger and indignation resulting from the arrest cannot be considered passion or obfuscation.

- **The act must be sufficient to produce such a condition of mind.**
  a. ***US v Diaz.*** If the cause of the loss of self-control was **trivial** and **slight**, the obfuscation is not mitigating. Examples:
     1) Victim failed to work on the hacienda of which the accused was the overseer
     2) When the accused saw the injured party picking fruits from the tree claimed by the former

2. That said act which produced the obfuscation was not far removed from the commission of the crime by a considerate length of time, during which the perpetrator might recover his normal equanimity

- The act producing obfuscation **must not be far removed from the commission of the crime by a considerable length of time**, during which the accused might have recovered his normal equanimity. To be proven by defense.

- **The crime committed must be the result of a sudden impulse of natural and uncontrollable fury.**
  a. ***People v Daos.*** Obfuscation cannot be mitigating in a crime which was **planned and calmly meditated**, or the impulse upon which the accused acted was **deliberately fomented** by him for a considerable period of time.

acquaintance. Impulse was caused by th sudden revelation that she was untrue to hir Mitigating circumstance is present.

c. ***People v Engay.*** Accused common law wi lived with deceased for 15 years as a real wi who house she helped support. Decease married another woman. Accused killed hir Mitigating circumstance present.

d. ***People v Yuman.*** Common-law spouses fo three or four years, until husband left the common dwelling. Deceased gave her a har treatment. Thinking that after the husband to advantage of her, he abandoned her, the wi stabbed husband. Mitigating circumstance present.

e. ***People v Bello.*** Accused learned that h (former) partner was being used for purposes prostitution, which wounded his feelings. H consumed a large amount of wine befo visiting his partner to plead that she leave h work. She insultingly refused the proposal an showed her determination to pursue a lucrativ profession. Mitigating circumstance wa present.

f. ***People v Gravino.*** Girl's sweetheart killed th girl's father and brother because the gir parents objected their getting married and th girl consequently broke-off their relationshi Act was actuated by lawlessness and reveng No mitigating circumstance.

In spirit of lawlessness

g. ***People v Caliso.*** Mother of the child has th right to reprimand accused for indecent converting the family's bedroom into rendezvous of herself and her lover. Nan poisoned the nine-month-old child. Nanny wa actuated by lawlessness and revenge.

h. ***People v Cabarrubias.*** Screams of an eight ye old child are not provocative enough

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generate a sudden impulse of natural and uncontrolled fury.

i. ***People v Sanico.*** Accused raped a woman because he found himself in a secluded place with a young ravishing woman who is almost naked. No mitigating circumstance.

In spirit of Revenge

j. ***People v Caliso.*** Woman poisoned the nine-month-old child she is taking care of with acid. Before the killing, the mother of the child surprised her with a man on the bed of the master and scolded her. No mitigating circumstance, she actuated with lawlessness and revenge.

k. ***People v Bates.*** Marcelo was infuriated upon seeing his brother shot by Jose. Marcelo hacked Jose right after seeing him shoot his brother. Upon seeing his brother dead, Marcelo went back to Jose who was already prostate and hardly moving. The second hacking was a clear case of acting out of revenge.

- **The offender must act under the impulse of special motives.**
  a. ***People v De Guia.*** Impulse in the state of **excitement** is not considered powerful as to produce obfuscation.
     ⇨ ***People v Flores.*** Each used a very insulting language concerning the other, and that they must have been very greatly excited as a result of the quarrel. Mitigating circumstance of obfuscation was present.
  b. ***People v Mil.*** Accused killed deceased because he did not deliver the letter of F to A. On the letter, the accused had pinned his hopes of settling the case against him amicably. Failure of deceased to deliver the letter is a prior unjust and improper act sufficient to produce great excitement and passion.

- **Where the crime arose out of rivalry, passion or obfuscation is mitigating.** Resentment resulting from rivalry is a powerful instigator of jealousy and prone to produce anger and obfuscation.
  ⇨ **Obfuscation arising from jealousy cannot be invoked if the relationship is illicit** ***(People v Salazar; People v Olgado)***
  ⇨ ***US v De la Peña.*** Loss of reason and self-control due to jealousy between rival lovers was not

b. ***US v Maalintal.*** The defendants believed good faith that the deceased casted upo their mother a spell of witchcraft which was th cause of her illness

c. ***Bongalon v People.*** Accused believed tha victims had thrown stones at his two min daughters and burned the hair of one of th daughters

- **Provocation and obfuscation arising from one an the same cause should be treated as only on mitigating circumstance.**

- **Vindication of grave offense cannot co-exist wit passion and obfuscation.**
  ⇨ **EXCEPTION:** Where there are other fac although closely connected with the fact upo which one circumstance is premised, the oth circumstance may be appreciated as base on the other fact. ***(People v Diokno)***

- **Passion or obfuscation is compatible with lack intention to commit so grave a wrong.**

- **Passion or obfuscation incompatible with treacher and evident premeditation.**

PASSION OR OBFUSCATION V IRRESISTABLE FORCE

PASSION/ OBFUSCATION	IRRESISTABLE FORCE
Mitigating Circumstance	Exempting Circumstance
Cannot give rise to an irresistible force	Requires physical force
Is in the offender himself	Comes from a third person
Must arise from lawful sentiments	Irresistible force is unlawful

PASSION V PROVOCATION

PASSION/ OBFUSCATION	PROVOCATION
Produced by an impulse which may be caused by provocation	Comes from the injured party
Offense need not be immediate The influence of the impulse must last until the moment the crime is committed	Must immediately precede the commission of the crime
Effect is loss of reason and self-control of offender	Effect is loss of reason and self-control of offender

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mitigating. (in an early case)

- **The cause producing passion or obfuscation must come from the offended party.**
  a. ***People v Esmedia.*** Two sons in the defense of their wounded father killed S. Under great excitement, they also killed C who was near the scene at the time. C had not taken part of the quarrel and had not provoked the sons. Passion and obfuscation cannot mitigate their liability with respect to C.

- **Passion or obfuscation <u>may</u> lawfully arise from the causes existing only <u>in the honest belief of the offender.</u>**
  a. ***US v Ferrer.*** The defendant believed that the deceased caused his dismissal from his employment

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7. VOLUNTARY SURRENDER AND CONFESSION OF GUILT

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

BASIS. Lesser perversity of the offender.

TWO MITIGATING CIRCUMSTANCES IN ART 13 PAR 7

1. **Voluntary surrender to a person in authority or his agents**
2. **Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution**

- When both of them are present, they should have the effect of two independent circumstances

VOLUNTARY SURRENDER TO A PERSON IN AUTHORITY OR HIS AGENTS

REQUISITES

1. **That the offender had not been actually arrested**
2. **That the offender surrendered himself to a person in authority or to the latter's agent**
3. **That the surrender was voluntary**

a. Voluntary surrender must be **spontaneous** in such a manner that is shows the interest of the accused to surrender unconditionally to the authorities
   - **Spontaneous.** Emphasized the idea of an inner impulse acting without external stimulus. The conduct of accused and not his intention alone after the offense determines spontaneity of surrender.
   - When the offender imposed a condition or acted with external stimulus, his surrender is not voluntary
   - **There is spontaneity even if the surrender was induced by fear.**

b. Either because he acknowledged his guilt or he wishes to save them the trouble and expenses necessarily incurred in his search and capture

c. Mitigating Circumstance cannot be appreciated when the offender did not intend to assume responsibility for crime even if he went with the barangay officials to the police station***(People v Nimuan)***

EXAMPLES, VOLUNTARY SURRENDER

a. ***People v Tenorio.*** After he commit the crime, accused when to the municipal hall, and in the presence of a patrolman, threw away his weapon, raised his hands and admitted his crime.
b. ***People v Dayrit.*** After commission of the crime, accused ran into his hotel room to hide from the companions of the deceased. He threw his weapon at the door. When the police arrived, he admitted ownership of the weapon and voluntarily wen with them.
c. ***People v Benito.*** After shooting, the accused called the police. When police arrived, he voluntarily approached them and without revealing his identity, told that he knew the suspect and his motive. In the police station, he confided to the investigators that he was voluntarily surrendering and surrendered the gun he use
d. ***People v Magpantay.*** Two accused left the crime but made several attempts to surrend

local officials which did not materialize for some reason It was already a week before after when they were finc able to surrender.
e. ***People v Radomes.*** Accused did not offer any resistanc nor try to hide when a policeman ordered him to com down his house. He even surrendered the bolo he use in the crime.
f. ***People v Jereza.*** Accused wen to the polic headquarters to surrender the firearm used in the crim His arrival at the police station is considered an act surrender.
g. ***People v Braña.*** The warrant of arrest had not bee served or not returned unserved because the accuse cannot be located. There is direct evidence that th accused voluntarily presented himself to the police whe he was taken into custody. Voluntary surrender w appreciated.

EXAMPLES, NOT CONSTITUTING VOLUNTARY SURRENDER

a. The warrant of arrest showed that the accused was fact arrested.
b. ***People v Roldan.*** Accused surrendered only after th warrant of arrest was served upon him.
c. ***People v Velez.*** Police blotter used the wor "surrendered" but the accused was admitted that h was actually yielded because of the warrant of arrest.
d. ***People v Mationg.*** Accused went into hiding an surrendered only when he realized that the police we closing in on them.
e. ***People v Salvilla.*** Accused were asked to surrender b polic and military but they refused until they realized th were completely surrounded and there was no chanc of escape. The surrender was not spontaneous.
f. ***People v De la Cruz.*** Search for accused lasted for fo years. This belies the spontaneity of the surrender.
g. ***People v Garcia.*** Accused went to a police in Dapupo City and asked that he be accompanied to Olongap City after he learned that his picture was seen posted the municipal building. No other evidence that h deliberately surrendered to police.
h. ***People v Trigo.*** Accused inly went to the police station report that his wife was stabbed by another persona an to seek protection for himself.
i. ***People v Rogales.*** Accused went to the PC headquarte not to surrender but merely to report the incident. This d not show accused's desire to own the responsibility f the crime.
j. ***People v Canoy.*** The Chief of Police placed the accuse under arrest in his employer's home. It does not appe that it was the idea of the accused to send for the polic for the purpose of giving himself up.
k. ***People v Ribinal.*** Accused was arrested in his boardin house and upon being caught, pretended to say that h was on his way to the municipal building to surrender authorities.

►There is no mitigating circumstance of voluntary surrender whe the defendant was in fact arrested. *(People v Conwi)*

⇨ ***People v Parana.*** Having the opportunity to escap accused voluntarily waited for the agents of th authorities and gave himself up, he is entitled to voluntar surrender, even if he was placed under arrest then an there.

⇨ ***People v Babiera.*** Accused helped in carrying his victi to the hospital where he was disarmed and arrested, it tantamount to voluntary surrender.

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►**The law does not require that the surrender be prior to the order of arrest.** The RPC does not make any distinction among the various moments when the surrender may occur.

- ⇨ ***Rivers v Court of Appeals.*** Accused presented himself in the municipal building to post bond for his temporary release. The fact that the order of arrest had already been issued is not bar to the application of mitigating circumstance of voluntary surrender.
- ⇨ ***De Vera v De Vera.*** Immediately upon learning that a warrant for his arrest was issued, and without the same having been served on him, the accused surrendered to the police. Accused may still be entitled to voluntary surrender.

►**Surrender of weapons cannot be equated wi surrender. Voluntary surrender does not simply mean non-flight.**

a. ***People v Jose de Ramos.*** After the incident, accused

VOLUNTARY CONFESSION OF GUILT BEFORE THE COURT PRIOR T THE PRESENTATION OF EVIDENCE FOR THE PROSECUTION

REQUISITES, PLEAS OF GUILTY

1. **That the offender spontaneously confessed his guilt**
2. **That the confession of guilt was made in open court, tha is, before the competent court that is to try the case**
3. **That the confession of guilt was made prior to th presentation of evidence for the prosecution**

1. **That the offender spontaneously confessed his guilt**
2. **That the confession of guilt was made in open court, tha is, before the competent court that is to try the case**

- **Extrajudicial confession** made by the accused is no voluntary confession since confession was mad outside the court.

reported it to the councilor. Then, he went to the Chief of Police to whom he relayed what happened and surrendered the bolo used in the crime. No mitigating circumstance.

b. ***People v Palo.*** Accused merely surrendered the gun used in the killing. No voluntary surrender.

c. ***People v Canoy.*** Accused did not escape or hide. In fact, he accompanied the Chief of Police to the scene of the crime without surrendering to him and admitting complicity in the killing. It does not matter if accused never avoided arrest and never hid or fled. What the law considers is the voluntary surrender before arrest. No voluntary surrender.

d. ***People v Rogales.*** Accused went to the PC headquarters to surrender but merely to report the incident. He never evinced any desire to own the responsibility for the killing. No voluntary surrender.

►The surrender must be made to a person in authority or his agent

PERSON IN AUTHORITY. One directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws whether as an individual or as a member of some court or governmental corporation, board or commission.

- **Barrio captian** and **barangay chairman** are also persons in authority.

AGENT OF A PERSON IN AUTHORITY. A person who, by direct provision of the law, or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority.

►The surrender must be by reason of the commission of the crime for which defendant is prosecuted.

a. Accused surrendered as a Huk to take advantage of the amnesty, but the crime he was prosecuted for was different and separate from rebellion. His surrender is not mitigating.

►Surrender through an intermediary (through the mediation of parent) **was mitigating. *(People v Dela Cruz)***

►Intention to surrender, without actually surrendering, is not mitigating.

3. That the confession of guilt was made prior to th presentation of evidence for the prosecution

- Plea of guilty must be made prior to the presentatio of the evidence for the prosecution. Plea of guil made during or after presentation of evidence b prosecution is not mitigating.
- The plea of guilty must be made before the tri begins. A plea of guilty made after the arraignme and after trial had begun does not entitle th accused a mitigating circumstance.

  ⇨ ***People v Coronel.*** Accused pleaded guilty on during the continuation of the trial. Dea penalty imposed was changed to li imprisonment because of plea of guilty.

  ⇨ ***People v Ortiz.*** Trial had already began f original information for murder and frustrate murder. Due to willingness of accused t cooperate, the information was amended b the prosecution to homicide and frustrate homicide. No evidence was presented connection with the new information. Accuse pleaded guilty. Mitigating.

- Plea of guilty must be made at the first opportunit please of guilty on **appeal** is not mitigating *(e.g. an offense cognizable by the MTC, plea of guil must be made at MTC and not upon appeal to RTC*

  ⇨ Plea in the preliminary investigation is no plea all.

  a. ***People v Oandasan.*** Offense is cognizab by CFI. Accused pleaded not guilty befo the MTC upon arraignment at preliminary investigation. When the ca was elevated to CFI, accused pleade guilty. Plea of not guilty during th arraignment at the prelimina investigation is not a plea at all. Plea guilty at the CFI (the competent court f the offense) was mitigating

  b. During arraignment, accused pleaded n guilty. Prior to presentation of evidence the prosecution, he withdrew his origin pleading and pleaded guilty. Mitigatin circumstance is present.

- **A conditional plea of guilty is not mitigating.**

  a. ***People v Moro Sabilul.*** An accused ma not enter a conditional plea of guilty in th

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sense that he admits his guilt provided that a certain penalty be imposed upon him.

- **Plea of guilty to a lesser offense is not mitigating.** To be voluntary, the plea of guilty must be to the offense charged.
  - ⇨ ***People v Ong.*** Accused pleaded guilty but denied that there evident premeditation attended the crime. Prosecution failed to prove evident premeditation. Mitigating.
  - ⇨ **Plea of guilty to the offense charged in the amended information lesser than that charged in the original information is mitigating.**
    a. ***People v Intal.*** Originally charged with double murder accused moved to withdraw his plea of not guilty to be substituted with a guilty plea to the lesser crime of double homicide. Prosecution moved to amend information. Mitigating.

►When the accused is charged with a grave offense, the court should take his testimony in spite of his plea of guilty. Where the accused pleads guilty to a capital offense, the court shall conduct a **searching inquiry** into the **voluntariness and full comprehension of the consequences of his plea** and shall require the **prosecution to prove his guild and the precise degree of culpability**.

►Plea of guilty is NOT mitigating in culpable felonies and in crimes punished by special laws.

8. PHYSICAL DEFECT OF OFFENDER

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of

9. ILLNESS OF THE OFFENDER

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.

BASIS. Diminution of intelligence and intent

REQUISITES

1. That the illness of the offender must diminish the exercis of his willpower
2. That such illness **should not deprive** the offender consciousness of his acts
   - ►because, when the offender **completely** lost th exercise of will-power, I may be an exemptin circumstance.
   - A deceased mind **not amounting to insanity** ma give place to mitigation.

EXAMPLES

a. ***People b Balneg.*** The mistaken belief that the killing of witch was for the public good
b. ***People v Amit.*** Mild behavior disorder. Illness of the nerv or moral faculty.
c. ***People v Formigones.*** Feeble-mindedness
d. ***People v Antonio.*** Schizzo-affective disorder or psychos

10. SIMILAR OR ANALOGOUS CIRCUMSTANCES

Article 13. Mitigating circumstances. - The following are mitigating circumstances:

10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

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action, defense, or communications with his fellow beings.

BASIS. The offender is suffering from physical defect, which restricts one's means of action, defense, or communication with one's fellow being, does not have complete freedom of action and, therefore, there is a diminution of the element of voluntariness

►There is a mitigating circumstance where accused suffers a physical defect that limits his means to act, defend himself, or communicate with his fellow beings.

a. Deaf
b. Dumb
c. Blind
d. Armless
e. Cripple
f. Stutter

- Being educated or uneducated does not matter, the paragraph does not distinguish

►The court is authorized to **consider in favor of the accused** ar other circumstance of a **similar nature and analogous** to thos mention is **paragraphs 1 to 9**

EXAMPLES

MITIGATING CIRCUMSTANCE	ANALOUGOUS CIRCUMSTANCES	CASE
Over 70 years of age	**Over 60 years old with failing sight**	People v Reantillo and Ruiz
Vindication of a Grave Offense	**Outraged feeling of owner of animal taken for ransom**	People v Monaga
Passion and obfuscation	**Outraged feeling of a creditor**	Creditor killed his debtor who tried to escape and refused to pay his debt; People v Merenillo
	Impulse of jealous feeling	Wife committed slander when she charged complainant with being the her husband's concubine and it was later found out that complainant was a virgin; People v Ubengen, CA
	Espirit de Corps (common loyalty shared	Many soldiers took part in the killing as they were responding to the

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	by members of a particular group) **Mass Psychology**	call and appeal of their lieutenant. Deceased summarily ejected certain soldiers from the dance hall; soldier considerd this a grave insult gainst their organizatio; People v Villamora
Illness that diminishes the exercised of will power	**Manifestations of Battered Wife Syndrome**	People v Genosa
Voluntary Surrender	**Voluntary restitution of stolen property**	People v Luntao
	Immediately reimbursing the amount malversed	Restitution even before prosecution does not extinguish liability; damage is not an element of malversation; Perez v People
Plea of Guilty	**Act of testifying for the prosecution without previous discharge**	People v Navasca
Incomplete justifying circumstance of State of Necessity	**Extreme Poverty and of economic difficulties**	Due to poverty, accused was forced to steal two sacks of paper and sell it in a cheaper price; People v Macbul ⇨ **Applies only to crimes against property but not a crime of violence, e.g. murder** ⇨ **Not mitigating when accused impoverished himself and lost occupation by committing crimes and not driven to crime due to poverty**

NON-EXAMPLES, NOT MITIGATING

a. ***People v Gona.*** Killing the wrong man
b. ***People v Canja.*** In parricide, that the husband was unworthy or was a rascal, bully and bad
c. ***Peole v Fajardo.*** That the victim was a bad or quarrelsome person
d. ***People v Dy Pol.*** In falsification, accused invo… of irreparable damage
e. ***People v Rabuya.*** Not resisting arrest without the slightest

ARTICLE 62. Effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency. - Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

►All mitigating circumstances are personal to the offenders.

MITIGATING CIRCUMSTANCES PERSONAL TO THE OFFENDERS serv… to mitigate the liability of principals, accomplice and accessori… as to whom they are attendant

a. **From the moral attributes of the offender**
   - A and B killed C. A acted under an impulse whic… produced obfuscation. The circumstance aros… from the moral attribute of A and shall mitigate th… liability of A only. It shall not mitigate the liability of
b. **From his private relations with the offended party**
   - Father committed robbery against Son, whi… Stranger bought the property despite knowledge … the crime. The circumstance arose from the priva… relation of Father and Son and shall mitigate liabili… of Father only, not that of Stranger.
c. **From any other personal cause**
   - Minor acting with discernment inflicted serio… physical injuries on Victim. Adult, seeing what Min… did, kicked Victim. Minority will mitigate liability … Minor but not of Adult.

CIRCUMSTANCES WHICH ARE NEITHER EXEMPTING NOR MITIGATIN…

a. Mistake in the blow or aberatio ictus
b. Mistake in identity
c. Entrapment of the accused
d. The accused is over 18; age is neither exempting n… mitigating
e. Performance of righteous action no matter ho… meritorious it may be

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attempt to resist is **not** analogous to voluntary surrender

f. ***People v Salazar.*** Condition of running amuck even if it is an age-old and deeply-rooted cult among the Moros

CHAPTER FOUR
CIRCUMSTANCE WHICH AGGRAVATE CRIMINAL LIA

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ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

There is treachery when the offender commits any o
the crimes against the person, employing means
methods, or forms in the execution thereof which tend
directly and specially to insure its execution, without
risk to himself arising from the defense which the

aggravating circumstances.

a. That advantage be taken by the offender of his public position.

b. That the crime be committed in contempt or with insult to the public authorities.

c. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that is be committed in the dwelling of the offended party, if the latter has not given provocation.

d. That the act be committed with abuse of confidence or obvious ungratefulness.

e. That the crime be committed in the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.

f. That the crime be committed in the night time, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.

g. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

h. That the crime be committed with the aid of armed men or persons who insure or afford impunity.

i. That the accused is a recidivist.

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

j. That the offender has been previously punished by an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

k. That the crime be committed in consideration of a price, reward, or promise.

l. That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or international damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

m. That the act be committed with evidence premeditation.

n. That the craft, fraud or disguise be employed.

o. That advantage be taken of superior strength, or means be employed to weaken the defense.

p. That the act be committed with treachery (alevosia).

offended party might make.

q. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

r. That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance of a crime a wall, roof, floor, door, or window be broken.

s. That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.

t. That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles, motorized watercraft, airships, or other similar means. (As amended by RA 5438).

u. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commissions.

AGGRAVATING CIRCUMSTANCE. Those which if attendant in the commission of the crime, serve to increase the penalty without exceeding the maximum of the penalty provided by law for the offense

BASIS. Based on the **greater perversity of the offender** manifested in the commission of the felony, as shown by:

a. The **motivating power** itself
b. The **place** of commission
c. The **means and ways** employed
d. The **time**; or
e. The **personal circumstances** of the offender or of the offended party

FOUR KINDS OF AGGRAVATING CIRCUMSTANCES

1. **Generic.** Those that can generally apply to all crimes
   - Can be offset by mitigating circumstances,
     ⇨ but **if not offset**, would affect only the maximum of the penalty prescribed

Paragraph	GENERIC Aggravating Circumstances
1	Taking advantage of public position
2	Committed in contempt of or with insult to the public authorities
3*	Committed in the dwelling of the offended party
4	Abuse of confidence or obvious ungratefulness
5	Committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged with their duties or place of worship
6	Nighttime, uninhabited place, or band
9	Recidivism
10	Habituality
14	Craft, fraud or disguise
18	Committed after an unlawful entry
19	Means of commission of the crime, a wall, roof, floor, door or window be broken
20	Committed with the aid of persons under 15 years of age

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2. **Specific.** Those that apply only to particular crimes
   - cannot be offset by mitigating circumstances

Paragraph	GENERIC Aggravating Circumstances
3*	With insult or in disregard of the respect due to the offended party on the account of his rank, age, or sex
15	Abuse of superior strength or means be employed to weaken the defense
16	Treachery in crimes against persons
17	Ignominy in crimes against chastity
21	Cruelty in crimes against persons

3. **Qualifying.** Those that change the nature of the crime to a graver one
   - Brings about penalty next higher in degree and cannot be offset by mitigating circumstances

   a) Treachery
   b) Evident premeditation
   c) Article 248. Qualifying aggravating c… for **murder**
      1) With treachery, taking advantage of superior strength, with the aid of armed men, or

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   c) Taking advantage of public position ar… membership in an organized/syndicated crim… group
   d) Error in personae
   e) Quasi-recidivism

AGGRAVATING	Definition	Mitigation	Effect
Generic	Applies to all crimes	Can be offset	Affects maximum period only
Specific	Applies only to particular crimes	Cannot be offset	
Qualifying	Changes the nature of the crime	Cannot be offset	Gives the crime… its proper and… exclusive name
Inherent	Must accompany the commission of the crime		Not considered,… no effect
Special	Arise under special circumstances	Cannot be offset	

QUALIFYING AGGRAVATING CIRCUMSTANCE v

employing means to weaken the defense or of means or persons to insure or afford impunity.

2) *In consideration of a price, reward, or promise.*
3) *By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.*
4) *On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.*
5) *With evident premeditation.*
6) *With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.*

4. **Inherent.** Those that must of necessity accompany the commission of the crime
   - Not considered in increasing the penalty to be imposed

   a) Evident premeditation is inherent in robbery, theft, estafa, adultery and concubinage
   b) Abuse of public office in bribery
   c) Breaking of a wall or unlawful entry into a house in robbery with the use of force upon things
   d) Fraud in estafa
   e) Deceit in simple seduction
   f) Ignominy in rape

5. **Special.** Those which arise under special conditions to increase the penalty of the offense and cannot be offset by mitigating circumstances

   a) Complex crimes
   b) Use of unlicensed firearms in homicide or murder

GENERIC AGGRAVATING CIRCUMSTANCE

GENERIC CIRCUMSTANCE	QUALIFYING CIRCUMSTANCE
Increases the penalty which should be imposed upon the accused to the maximum period without exceeding the limit prescribed by law	Gives the crime its proper its proper and exclusive name and places the author thereo in such a situation as to deserve no other penalty than that specially described by law for said crime
May be set off by an ordinary mitigating circumstance since it is not an ingredient of the crime	Cannot be offset by a mitigating circumstance since it is considered an ingredient of the crime
	Must be alleged in the Information as a qualifying aggravating circumstance otherwise, it is a generic aggravating circumstance only

RULES IN AGGRAVATING CIRCUMSTANCES

1. Aggravating circumstances shall not be appreciated if:
   a. The constitute a crime specially punishable by law
   b. They are included by law in defining a crime an prescribing a penalty therefor

2. Aggravating circumstance shall not be appreciated if it inherent in the crime to such a degree that it must of necess accompany the commission thereof

3. Aggravating circumstances which arise **a)** from the mor attributes of the offender, **b)** from his private relations to th offended party, or **c)** from any personal cause, shall serve or to aggravate the liability of the principals, accomplices an accessories as to whom such circumstances are attendant

4. Aggravating circumstances which consist **a)** in the mater execution of the act; or **b)** in the means employed accomplish it, shall serve to aggravate the liability of thos persons who had knowledge of them at the time of th execution of the act or their cooperation therein

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⇨ **Exception.** When there is proof of conspiracy in which case the act of one is deemed to be the act of all, regardless of lack of knowledge of the facts constituting the circumstance

5. **Aggravating circumstance is not presumed.** Aggravating circumstance, regardless of its kind should be specifically alleged in the information and proved as fully as the crime itself in order to increase the penalty.

6. When there is more than one aggravating circumstance present, one of them will be appreciated as qualifying aggravating circumstance while the others will be considered as generic aggravating.

JUSTIFYING CIRCUMSTANCES

a. **ABUSE OF OFFICIAL POSITION**
b. **CRIME COMMITTED IN CONTEMPT OF OR WITH INSULT TO PUBLIC AUTHORITIES**
c. **CRIME COMMITTED WITH INSULT OR LACK OF REGARD DUE TO THE OFFENDED PARTY BY REASON OF AGE, SEX, OR RANK OR THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY**
d. **ABUSE OF CONFIDENCE OR OBVIOUS UNGRATEFULNESS**
e. **CRIME IS COMMITTED IN THE PALACE OF THE CHIEF EXECUTIVE, OR IN HIS PRESENCE, OR WHERE PUBLIC AUTHORITIES ARE ENGAGED IN THE DISCHARGE OF THEIR DUTIES, OR IN A PLACE DEDICATED TO RELIGIOUS WORSHIP**
f. **NIGHTTIME, UNINHABITED PLACE AND BAND**
g. **ON THE OCCASION OF CALAMITY OR MISFORTUNE**
h. **AID OF ARMED MEN OR PERSONS WHO INSURE OR AFFORD IMPUNITY**
i. **RECIDIVISM**
j. **REITERACION OR HABITUALITY**
k. **IN CONSIDERATION OF PRICE, REWARD OR PROMISE**
l. **BY MEANS OF INUNDIATION, FIRE, POISON, EXPLOSION, STRANDING OF A VESSEL OR INTENTIONAL DAMAGE THERETO, DERAILMENT OF A LOCOMOTIVE, OR BY THE USE OF ANY OTHER ARTIFICE INVOLVING GREAT WASTE AND RUIN**
m. **EVIDENT PREMEDITATION**
n. **CRAFT, FRAUD, OR DISGUISE**
o. **ABUSE OF SUPERIOR STRENGTH OR MEAI WEAKEN HE DEFENSE**
p. **TREACHERY (ALEVOSIA)**
q. **IGNOMINY**

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1. ABUSE OF OFFICIAL POSITION

ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position.

BASIS. Greater perversity of the offender as shown by the person circumstance of the offender and also by the means used

a. Applicable only when the offender is a public officer wh takes advantage of his public position.

b. The public officer must use the influence, prestige ascendancy which his office gives him as the means b which he realized his purpose.
   ⇨ When the public officer did not take advantage the influence of his position, Art 14 par 1 does n apply. When a public officer commits a comma crime independent of his official functions and do acts that are **not** connected with the duties of h office, he should be punished as a private individu without this aggravating circumstance.

c. There must be proof that the accused took advantag of his public position.
   ⇨ If the accused could have perpetrated the crim even without occupying his position, there is n abuse of public position.

   1) ***People v Villamor.*** It was not shown th accused took advantage of his being policeman to shoot victim or that he used h influence, prestige or ascendancy in killing hi No aggravating circumstance.
   2) ***People v Herrera.*** Use of government-issue gun is not sufficient to establish the misuse public position.

d. Wearing of uniform is immaterial in certain cases.
   1) ***People v Tongco.*** Even if accused was in civilia clothes at the time, when the victim was aware his being a policeman, and he sought to impos illegally his authority, aggravating circumstance attendant.
   2) ***People v Pantoja.*** Even if accused was in fatigu

r. **UNLAWFUL ENTRY**
s. **BREAKING OF WALL, ROOF, FLOOR, DOOR, OR WINDOW**
t. **USE OF MOTOR VEHICLES AND OTHER SIMILAR MEANS**
u. **CRUELTY**

uniform and had army rifle at the time, it is n
sufficient to establish that he misused his publ
position.

e. Failure in official duties is tantamount to abusing office.
- ***US v Cagayan.*** The vice-president of a town at th
time **voluntarily** joined a band of brigands made h
liability greater.

f. Not aggravating when it is an integral element of,
inherent in, the offense
1) Malversation
2) Falsification of document committed by publ
officers
3) Accessories under Article 19 par 3
4) Crimes committed by public officers (Arts 204 to 24

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2. CRIME COMMITTED IN CONTEMPT OF OR WITH INSULT TO PUBLIC AUTHORITIES

ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

2. That the crime be committed in contempt or with insult to the public authorities.

BASIS. Based on greater perversity of the offender, as shown by his lack of respect to public authorities

REQUISITES

1. **That the public authority is engaged in the exercise of his functions**
2. **That he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed**
3. **The offender knows him to be a public authority**
4. **His presence has not prevented the offender from committing the criminal act**

a. **PUBLIC AUTHORITY or PERSON IN AUTHORITY** is a public officer who is directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws. *e.g. councilor, mayor, governor, barangay captain/chairman*

b. Aggravating circumstance **does not apply** when crime is committed **in the presence of an agent only.**

AGENT OF A PERSON IN AUTHORITY is any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property. *e.g. barrio councilman, barrio policeman, barangay leader, persons who comes to the aid of persons in authority, police*

c. **The crime should NOT be committed against the public authority.** Otherwise, offender will be committing **DIRECT ASSAULT (Art 148)**

d. Lack of knowledge on the part of the offender that a public authority is present indicates lack of intention to insult the public official.

e. Aggravating circumstance is present if the offender was **not prevented by the presence of a public officer made known to the offender.**

3. CRIME COMMITTED WITH INSULT OR LACK OF REGARD DUE TO TH OFFENDED PARTY BY REASON OF AGE, SEX, OR RANK OR THE CRIM IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY

ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that is be committed in the dwelling of the offended party, if the latter has not given provocation.

FOUR AGGRAVATING CIRCUMSTANCES IN PAR 3. Four aggravatin circumstances are enumerated which may be considered **sing** or **together.** If all four are present, they have the weight of one on

3.1. RANK. Refers to the designation or title of distinction use to fix the relative position of the offended party reference to the others. There must be a difference in th social conditions of the offender and the offended part

3.2. AGE. Refers to the time the person or a thing has existe since birth or beginning; or that may refer to old age the tender age of the victim.

3.3. SEX. Refers to the female sex, not to the male sex.

3.4. DWELLING. Must be a building of structure, exclusive used for rest and comfort. Includes dependencie staircase, and enclosures under the house. It is **n** necessary that the house is owned by the offende party.

BASIS. Based on the greater perversity of the offender as shown the personal circumstances of the offended party and the plac of the commission of the crime

a) Rank, age or sex may be taken into account **only crimes against persons or honor.** Does not apply in crime against property.
   - ***People v Pagal.*** Robbery with homicide is primarily crime against property, homicide is just an incide of the robbery.

b) There must be proof that the offender deliberate intended to offend or insult the offended party.

3.1. RANK

c) There must be a difference in the social condition of th offender and offended party *e.g.*
   1) *private person who attacked person in authority*
   2) *pupil who attacked a teacher*
   3) ***People v Valeriano.*** Killing a judge
   4) ***People v Torres.*** Attempt against the life of a gener

d) **The fact of disregard and deliberate intent to insult mu be proved.** There being no proof of the specific fact circumstance that the accused disregarded the respe due to the offended party and that the accuse deliberately intended to insult the rank of the victi disregard of rank cannot be appreciated as aggravati circumstance.

3.2. AGE

e) The circumstance of lack of respect due to age **applie in cases where the victim is of tender age as well as old age.**
   1) When the offended party, by reason of his ag

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1) which the offended party, by reason of his ag
could be the father of the offender

2) ***People v Orbillo.*** Where aggressor was 45 yo and the victim was an octogenarian
3) ***People v Gummuac.*** Where victim was 80 yo and very weak
4) ***People v Zapata.*** Where victim was 65 while offenders were 32 and 27 yo
5) ***People v Curatchia.*** Accused is the grandson of the deceased
6) ***People v Lora.*** Victim was a 12 yo boy

f) It must be proved that the accused intended to offend or insult the age of the v

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3.3. SEX

⇨ ***People v Sespeñe.*** Deceased was only about to ste
on the first rung of the ladder when he w
assaulted, dwelling is not aggravating

o) When deceased has two houses where he used to liv
the commission of the crime in any of them is attende
by the aggravating circumstance of dwelling

p) The home is a sort of sacred place for its owner. He wh
goes to another's house to slander him, hurt him or d
him wrong, is more guilty than he who offends hi
elsewhere.

q) **What aggravates commission of crime in one's dwelling**

g) This refers to the female sex, not to the male sex
   1) ***US v Quevengco.*** Accused compelled a woman to ho to his house against her will
   2) ***People v Dayug.*** Accused selected and killed a female relative of the killers of his relative in retaliation
   3) ***Sarcepuedes v People.*** Direct assault upon a lady teacher

h) Killing a woman is not attended by this aggravating circumstance if the offender did not manifest any specific insult or disrespect towards her sex.

i) Disregard of sex is not aggravating in the absence of evidence that the accused deliberately intended to offend or insult the sec of the victim or showed manifest disrespect to her womanhood

j) Disregard of sex is **not** appreciated in certain cases
   1) When the offender acted with passion and obfuscation
   2) When there exists a relationship between the offended party and the offender
   3) When the condition of being a woman is indispensable in the commission of the crime

k) Sex is not aggravating in
   1) Parricide
   2) Rape
   3) Abduction
   4) Seduction

l) **Disregard of sex is absorbed in treachery.**
   e.g. ***People v Clementer (1974).*** There was disregard of sex because the blouse of the victim was needlessly removed, but the circumstance is absorbed in treachery.

   ⇨ ***People v Lapaz (1989).*** Held that aggravating circumstances of disregard of sex and age are not absorbed in treachery because treachery refers to the manner of the commission of the crime, while disregard of sex and age pertains to the relationship of the victim.

3.4. DWELLING

m) A dwelling must be a building of structure, exclusively used for rest and comfort.
   - A combination of house and store or a marker stall where the victim slept is **not a dwelling.**

n) Dwelling includes dependences, the foot of the staircase and enclosure under the house.
   ⇨ ***People v Diamonon.*** Crime committed at the foot of the stairs, not aggravating
   1) The abuse of confidence which the offended par reposed in the offender by opening the door to hi
   2) The violation of the sanctity of the home b trespassing therein with violence or against the w of the owner

r) It must be proved that the defendant entered the hou of the victim to attack him.
   - ***US v Ramos.*** Dwelling is not aggravating where th deceased was called from his house and he w murdered in the vicinity.
   ⇨ ***People v Ompaid.*** Triggerman fire the shot fro outside the house, his victim was inside. It is n necessary that the accused should have actua entered into the dwelling of the victim to commit th offense; it is enough that **the victim was attacke inside his own house**.
   ⇨ Even if the killing took place outside the dwelling **the commission of the crime began in the dwellin** it is aggravating.
      1) ***US v Lastimosa.*** Accused began the aggressio in victim's house, dragged him outside th house and took him to a place near the hou where he killed him.
      2) Aggravating in **abduction** or **illegal detentio** where the **victim was taken from her house** an carried away to another place

s) A condition *sine qua non* of this circumstance is that th **offended party has not given provocation** to th offender. If all the conditions are present, offended par is deemed to have given provocation, hence, dwelling not aggravating.

   PROVOCATION must be
   1) Given by the owner of the dwelling
   2) Sufficient, and
   3) Immediate to the commission of the crime.
   4) *There must be a close relation between provocation and commission of the crime in the dwelling

t) Prosecution must prove that no provocation was give by offended party so that dwelling may be aggravatin

u) Dwelling is **NOT** aggravating in the following cases
   1) When both offender and offended party a occupants **of the same house**, even if offender is servant in the house
      - Dwelling is aggravating when the husban killed his estranged wife **in the house sole occupied by her**, other than the conjugal hom ***(People v Galapia)***

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- When adultery (by the wife) is committed in the dwelling of the husband even if it is also the dwelling of the wife
  - ⇨ Not aggravating in adultery when the paramour also lives in the house (together with offending wife and husband)
    - ⇨ But **abuse of confidence** was applied when offended husband took the paramour into his home, furnished him with food and lodging without charge, and treated him like a son ***(US v Destrito)***

2) When robbery is committed **by use of force upon things**
   - ⇨ Dwelling is aggravating in **robbery with violence against or intimidation of persons**
3) In crime of **trespass** to dwelling
4) When owner of dwelling gave **sufficient and immediate provocation**
5) When the dwelling does not belong to the offended party
6) When the floor (part of the building) is not exclusively used as a dwelling

v) Dwelling was found aggravating in the following cases **although** the crimes were committed **not in the dwelling of the victims (other places deemed as dwelling)**
1) Victim was raped in the boarding house where she was a bed spacer
2) Victims were raped in their **paternal** they were guests at the time
   - ***People v Basa.*** Victims were killed while sleeping as guests in the house of another person; **law spoke of dwelling not domicile**

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4. ABUSE OF CONFIDENCE OR OBVIOUS UNGRATEFULNESS

ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

4. That the act be committed with abuse of confidence or obvious ungratefulness.

BASIS. Based on the greater perversity of the offender as shown the means and ways employed

TWO AGGRAVATING CIRCUMSTANCES IN PAR 4
4.1. ABUSE OF CONFIDENCE
4.2. OBVIOUS UNGRATEFULNESS

4.1. ABUSE OF CONFIDENCE

a) **REQUISITES**
1) **That the offended party had trusted the offender**
2) **That the offender abused such trust by committing crime against the offended party**
3) **That the abuse of confidence facilitated th commission of the crime**

b) **EXAMPLES, When confidence is NOT present**
1) ***People v Luchico.*** When the master raped th offended party, she had already lost confidence him from the moment he made an indece proposal and killed her.
2) ***People v Brocal.*** No abuse of confidence in rap where on the day of the crime, the accused w with the company of the offended girl because th were business partners, not because of confidenc
3) ***People v Ong.*** When deceased was invited b accused to nightclubbing bring the money he owe
4) ***People v Arthur.*** Betrayal of confidence is n aggravating. Parents entrusted victim to the care

person, **law spoke of dwelling not domicile**

⇨ ***People v Ramolete.*** Not aggravating when the victim was a mere visitor of the house where he was killed

3) Victim was killed in the house of her aunt where she was living; **may mean temporary dwelling**

w) **Dwelling is NOT included in treachery**

the accused. Accused raped the victim an betrayed the confidence of her parents. The g could resist (although unsuccessful) against th crime

⇨ ***People v Caliso.*** When the killer of the child the domestic servant of the family an sometimes the amah (yaya) of the decease the nine-month0old child cannot resist th crime and the confidence of the parer facilitated the commission of the crime

c) The confidence between the offender and the offende party must be immediate and personal
e.g. ***US v Torrida.*** Mere fact that voters had repose confidence in the public officer does not mean that h abused their confidence when he committed esta against them

d) **Abuse of confidence is inherent in**

1) Malversation
2) Qualified theft
3) Estafa by conversion or misappropriation
4) Qualified seduction

4.2. OBVIOUS UNGRATEFULNESS

e) **Ungratefulness must be obvious, manifest and clear**

f) **EXAMPLES, Where ungratefulness was present**

1) ***People v floresca.*** Accused killed his father-in-law i whose house he lived and who partially supported him
2) ***People v Lupango.*** Where the accused was living i the house of the victim who employed him as an

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overseer and had free access of the house; victim was very kind to him and his family

3) ***People v Nismal.*** Where a security guard killed bank officer and robbed the bank
4) ***People v Baustista.*** Where the victim was suddenly attacked while giving the assailants their breakfast
5) When visitor commits robbery or theft in the house of his host
   - ⇨ ***Mariano v People.*** Stealing the property of the host was considered as committed with abuse of confidence

5. CRIME IS COMMITTED IN THE PALACE OF THE CHIEF EXECUTIVE, O IN HIS PRESENCE, OR WHERE PUBLIC AUTHORITIES ARE ENGAGED THE DISCHARGE OF THEIR DUTIES, OR IN A PLACE DEDICATED T RELIGIOUS WORSHIP

ARTICLE 14. Aggravating circumstances. - The following are aggravating circumstances:

5. That the crime be committed in the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.

BASIS. Based on the greater perversity of the offender as shown the place of the commission of the crime

PLACE WHERE PUBLIC AUTHORITIES ARE ENGAGED IN THE DISCHARGE OF THEIR DUTIES v CONTEMPT/ INSULT TO PUBLIC AUTHORITIES

Place where Public Authorities Engage in the Discharge of their Duties	Contempt or Insult to Public Authorities
Public authorities are in the performance of their duties	Public authorities are in the performance of their duties
Public authority must be in their office	The authority must be outside the office
Public authority may be the offended party	Public authority must not be the offended party

a) ►That the crime is **committed at Malacañang palace a church** is aggravating, regardless of whether State official or religious functions are being held.
   - ⇨ Cemetery **not** considered a place dedicated religious worship.

b) ►It is enough that the crime be **committed in th presence of the Chief Executive** so that it will b aggravating; he need not be in Malacañang palace not engaged in the discharge of his duties.

c) ►That the crime was **committed where public authoriti are engaged in the discharge of their duties**, there mu be some performance of public functions so that it will b aggravating.
   1) ***US v Punsalan.*** Not aggravating when accuse killed victim in the adjoining room of the courtroo and that the court has already adjourned
   2) ***People v Canoy.*** Crime committed in an **elector precinct during election day** is aggravating

d) Offender must have intention to commit a crime whe he entered the place
   e.g. ***People v Jaringue.*** Deceased placed his hand the thigh of the accused girl who killed him using a fo

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