

registration; voluntary dealings with registered land, subsequent registration; involuntary dealings with registered land; The Cadastral System of land registration; Public Land Act; registration through administrative proceedings; Registration under the Spanish Mortgage Law; Registration under Act 3344; Real Estate Mortgage; Chattel Mortgage; and the Appendices. In the discussions of particular topics found in each of these chapters, the author has made use of his broad experience on the matter to great advantage. He has included in this book jurisprudence laid down by our Supreme Court in its recent decisions. Legislations enacted by Congress affecting the provisions of the different laws embraced by Land Registration also appear in this book. This book indeed, to quote the author himself, "is comprehensive and all-embracing as to cover practically every inch of ground of the subject of land titles and deeds."

ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1958

CRIMINAL LAW

Answered by Prof. Luis B. Reyes

I.

(a) Define crime; criminal law. (b) Enumerate accused person's constitutional rights; statutory rights. (c) Name a right which may be waived and one which may not be waived. State the reason or principle underlying the difference between rights which may be waived and rights which may not be waived.

(a) Crime is defined as an act committed or omitted in violation of a public law forbidding or commanding it. (Bouvier's Law Dictionary, Rawle's Third Revision, Vol. 1, p. 729).

Criminal law is that branch or division of law which defines crimes, treats of their nature, and provides for their punishment. (12 Cyc. 129)

(b) The constitutional rights of the accused are:

1. No person shall be held to answer for a criminal offense without due process of law.
2. All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required.
3. In all criminal prosecutions the accused shall be presumed to be 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 a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf.
4. No person shall be compelled to be a witness against himself.
5. Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.
6. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.
7. Free access to the courts shall not be denied to any person by reason of poverty. (Art. III, Bill of Rights, Phil. Const.)

The statutory rights of the accused are:

1. To be present and defend in person and by attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment;
2. To be informed of the nature and cause of the accusation;
3. To testify as witness in his own behalf. But if a defendant offers himself as a witness he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him;
4. To be exempt from being a witness against himself;
5. To be confronted at the trial by, and to cross-examine the witness against him. Where the testimony of a witness for the prosecution has been previously taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross-examine the witness, the testimony or deposition of the latter may be read upon satisfactory proof to the court that he is dead or incapacitated to testify, or cannot with due diligence be found in the Philippines;
6. To have compulsory process issued to secure the attendance of witnesses in his behalf;
7. To have a speedy and public trial;
8. To have the right of appeal in all cases authorized by law. (Rule 111, Sec. 1, Rules of Court)

(c) A right which may be waived is the right of the accused to confrontation and cross-examination. A right which may not be waived is the right of the defendant to be informed of the nature and cause of the accusation against him. The reason or principle underlying the difference between rights which may be waived and rights which may not be waived is that those rights which may be waived are personal, while those rights which may not be waived involved public interest which may be affected.

II.

(a) To what offenses committed outside the territorial limits of the Philippines do the provisions of the Revised Penal Code apply? Name them. (b) A jilted suitor forcibly carried a girl aged 20 to another town where he kept her against her will for several days, and through intimidation tried without success, to make her marry him. He had no thought of soiling her chastity and did not touch her person beyond what was necessary to accomplish his purpose to marry the girl. What, if any, crime did the suitor commit? State your reason.

(a) The provisions of the Revised Penal Code apply to the following offenses committed outside the territorial limits of the Philippines:

1. Offenses committed on a Philippine ship or airship;
2. Forging or counterfeiting any coin or currency note of the Philippines or obligations or securities issued by the Government of the Philippines;
3. Acts connected with the introduction into the Philippines of the obligations and securities mentioned in the preceding number;
4. Offenses committed by public officers or employees in the exercise of their functions; and

5. Crimes against the national security and the law of nations. Art. 2, Rev. Penal Code)

(b) It is submitted that the answer to this question must be qualified, because there is no indication that the girl was deprived of her liberty. It appearing from the facts stated in the question that the jilted suitor had no thought of soiling her chastity and did not touch her person beyond what was necessary to accomplish his purpose to marry the girl, it is submitted that the crime committed would be serious illegal detention, if there is deprivation of liberty. Abduction, being one of the ways in which illegal detention can be committed, especially qualified by lewd intention, the kidnapping of a woman without unchaste designs must, according to Viada and to our Penal Code, be considered as illegal detention (People v. Cristostomo, 46 Phil. 775). However, when there is no clear deprivation of liberty but the offended woman is compelled to do something against her will, such as to make her marry the offender through intimidation, the crime committed is grave coercion (People v. Dauatan, (CA) 35 O.G. 450). Hence, when there is deprivation of liberty, the victim being a woman, the crime committed is serious illegal detention. If there is no deprivation of liberty but the victim was compelled to do something against her will by means of intimidation or violence, the crime committed is grave coercion. In case of doubt as to whether or not there is deprivation of liberty, the purpose of the offender must be taken into consideration to determine the crime actually committed. In this case, since the purpose of the offender was to compel the girl by means of intimidation to marry him, the crime committed is grave coercion, not serious illegal detention.

III.

(a) Is evident premeditation an aggravating circumstance in a case of robbery? In a case of treason? State your reasons. (a) A police officer on duty was shot and killed with treachery, with evident premeditation, at night time purposely sought to facilitate the perpetration of the killing, and with the aid of armed men to insure or afford impunity. What crime did the offender commit? And how is each of the above circumstances to be regarded, as aggravating or qualifying?

(a) Evident premeditation as an aggravating circumstance should not be taken into consideration for the purpose of increasing the penalty in the crime of robbery, because it is inherent in that crime, especially where the crime is committed by various persons, for they must have an agreement, they have to meditate and reflect on the manner of carrying out the crime and they have to act coordinately in order to succeed (People v. Valeriano, R. No. L-2159, Sept. 19, 1955).

In the crime of treason, evident premeditation is not aggravating, because in treason adherence and the giving of aid and comfort to the enemy is usually a long continued process requiring reflective, persistent determination and planning (People v. Racaza, 46 O.G. 2590).

(b) The crime committed is direct assault with murder qualified by treachery, with the generic aggravating circumstance of evident premeditation. Nighttime and with the aid of armed men to insure or afford impunity should not be taken into consideration as separate aggravating circumstances, because they are inherent in or absorbed by the qualifying circumstance of treachery.

IV.

(a) A and B engaged in a face-to-face fight in which B was fatally wounded, dying eight hours later. C, A's brother, hearing of the fight came rushing, and finding the dying man sprawled on the ground and A standing by, stabbed B in the leg inflicting in that limb a wound which did not affect the offended party's general physical condition and which would have taken ten days to cure if B had not died from the effects of the injuries inflicted by A. For what crime was C liable and in what capacity — that of principal, accomplice, or accessory? State your reason. (b) If upon the same circumstances C stabbed B in the throat and thereby hastened B's death, killing B instantly, what crime did C commit and in what capacity? State your reason.

(a) When C stabbed B in the leg inflicting on that limb a wound which did not affect the offended party's general physical condition, and which would have taken ten days to cure if B had not died from the effects of the injuries inflicted by A, C would be guilty as an accomplice in the crime of homicide. The crime committed is only homicide because when A fatally wounded B, it was not attended by any aggravating circumstance that would qualify the crime to murder, the attack having begun face to face. C was only an accomplice in the crime of homicide committed by A, because there was no conspiracy or unity of purpose and intention between A and C. C, knowing the criminal design of A, merely concurred in the latter's criminal purpose (People v. Acona, 59 Phil. 580; People v. Tamayo, 56 Phil. 587; People v. Cortes, 55 Phil. 143; and People v. Antonio, 73 Phil. 421).

(b) If upon the same circumstances C stabbed B in the throat and thereby hastened B's death, killing B instantly, C would be guilty as a co-principal in the crime of homicide, because although C merely concurred in the criminal design of A, he cannot be considered an accomplice because he inflicted a mortal wound. An accomplice in crimes against person should not inflict a mortal wound (U.S. v. Zalsos, 40 Phil. 103).

V.

A municipal treasurer, after appropriating to his own use P100.00 from public funds under his custody, changed an entry in the ledger so as to make the money transactions recorded in the ledger tally with the amount remaining after the misappropriation. The same municipal treasurer caused to be included in a payroll the name of a fictitious laborer and made personal use of the amount which had been fraudulently made to appear having been paid to such laborer. What crime or crimes did the municipal treasurer commit in each of these two cases? Reason your answer giving particular emphasis on the question whether or not there is a juridical difference between the said cases.

In the first case, the municipal treasurer is guilty of two crimes, namely: (1) malversation of public funds, and (2) falsification of a public official document by changing an entry in the ledger, which is a genuine document, the alteration changing the meaning of the document. This should not be a complex crime, because the municipal treasurer had in his possession the public funds and it would not be necessary to falsify the ledger to enable him to commit the crime of malversation (U.S. v. Ceta, 43 Phil. 1009).

In the second case, the municipal treasurer committed also two crimes, namely: (1) malversation of public funds, and (2) falsification of a public or official document (the payroll). This can not be a complex crime also, for the same reasons stated in the first case. There is no juridical difference between the two cases, because in both cases the commission of falsification was not necessary to commit the crime of malversation. The crime of falsification was committed by the municipal treasurer to conceal the crime of malversation.

VI.

A prisoner who had been sentenced to ten years' imprisonment was granted a conditional pardon, which he accepted, when he had six more months to serve, the condition being that he should not again commit any law violation. Three years after the pardoned prisoner's release he committed a violation of the Internal Revenue Code and, upon trial, was found guilty and sentenced to pay a fine. Is he subject to prosecution for violation of the conditional pardon under Art. 158 of the Revised Penal Code, which punishes violation of a conditional pardon with prison correccional in its minimum period? State the reason for your answer.

The rule is that the duration of the condition subsequent, annexed to a pardon, is to be limited to the period of the prisoner's sentence, unless an intention to extend it beyond that time was manifest from the nature of the condition or the term in which it was imposed (Infante v. Provincial Warden, 48 O.G. 5228). The conditional pardon, as mentioned in the question, does not state the time within which the conditions thereof were to be observed. Since the subject was granted a conditional pardon when he had only six months more to serve, and that he committed a violation of the Internal Revenue Code three years after he was granted a conditional pardon, the conditional pardon which he was charged with having breached was no longer operative when he committed a violation of the Internal Revenue Code.

VII.

(a) A stole from B a watch which B had previously stolen from another person, and so B was not the lawful owner of the article. Was A guilty of theft? State the reason for your answer. (b) A believing in entire good faith that a watch he saw B using was the watch which had previously been snatched from his wrist, a belief which later proved mistaken, did, through physical violence, take possession of said watch. What crime, if any, did A commit? State your reason.

(a) It is submitted that A was guilty of theft, although the property stolen by him from B had been previously stolen by the latter from another person. One of the elements of the crime of theft is that the property belongs to another. This element has been interpreted by the Supreme Court to mean that it is sufficient that the offender is not the owner of the property taken. The person from whom the personal property is taken need not be the owner. Possession of the property by the person from whom the property was taken is sufficient (U.S. v. Albao, 29 Phil. 86).

(b) It is submitted that A committed the crime of grave coercion. Since he believed in good faith that the watch he saw in the possession of B

was his own property, A did not commit the crime of robbery. One who takes property openly and avowedly under claim of title preferred in good faith is not guilty of robbery, even though the claim of ownership is untenable (U.S. v. Manlico, 28 Phil. 360).

VIII.

A husband is prosecuted for killing his wife under the following circumstances: Upon arriving home from a trip he found his wife and a man on their feet, naked, in a bedroom. He then and there shot his wife while her paramour managed to escape. If you were the judge, would you give the accused the benefit of Art. 247 of the Revised Penal Code about one spouse surprising the other etc.? Give your reason.

If I were the judge, I would not give the accused the benefit of Art. 247 of the Revised Penal Code, because he did not surprise his spouse in the act committing sexual intercourse with her paramour. Under Art. 247 of the Revised Penal Code, it is an indispensable requisite that a legally married person should surprise his spouse in the act of committing sexual intercourse with another person (People v. Gonzales, 69 Phil. 66).

IX.

(a) A was aroused from sleep by a noise in his room, which was unlighted, and saw in the room the outline of a man. Asked who he was, the man did not identify himself. Believing that man to be a burglar, A shot and killed him with his (A's) pistol, which he kept under his pillow. The man who A thought was dangerous thief, it turned out, was A's son. Is A criminally liable for the killing? State your reason. (b) A waited in ambush for B to kill him. He saw C a few meters away and, believing C to be B, he fired upon and killed C, whom he had not the slightest intention of hurting. Can A claim exemption from criminal liability for C's death? Give your reason for the answer.

(a) Even assuming that the person inside the house was an intruder, it is submitted that A would not be justified in shooting him to death. A cannot claim defense of property or defense of home under paragraph 1 of Article 11 of the Revised Penal Code, because in either case the law requires that there must be unlawful aggression on the part of the aggressor. Inasmuch as the question does not mention any fact indicating the existence of unlawful aggression on the part of the person whom A believed was an intruder, he would not be justified to shoot and kill him. This cannot be a mistake of fact, because in mistake of fact the act done would have been lawful had the facts been as the accused believed them to be (U.S. v. Ah Chong, 15 Phil. 488). Hence, A committed a felony when he shot and killed the person whom he believed was an intruder in his house. Under Art. 4, par. 1, of the Revised Penal Code, criminal liability is incurred by any person committing a felony although the wrongful act done be different from that which he intended. In view of this provision it is submitted that A is criminally liable for the killing of his son.

(b) A is liable for killing C, even though he did not have the slightest intention of hurting the latter. When A fired upon C, believing him to be B, he was committing a felony. The death of C is the direct consequence of the felony committed by A (People v. Gona, 54 Phil. 605).

X.

(a) Name all the circumstances any one of which makes the taking of human life murder. (b) A issued a check without funds in payment of an outstanding debt knowing the check would be honored. Did A, or did he not, commit any penal offense? If your answer is yes, what was the offense? If your answer is no, why not? (c) Name the crimes which must be prosecuted upon complaint of the offended party, and state the reason which underlies this requirement.

(a) Murder is committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means 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 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 any 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. (Art. 248, Revised Penal Code)

(b) It is submitted that A did not commit any penal offense. When a person issued a check in payment of a pre-existing obligation, even if at the time he knew that he had no funds in the bank to cover the check and even if he did not inform the payee of that fact, there is only civil liability. The reason for this answer is that in the crime of estafa by post-dating or issuing a check, it is required that the said check must be issued and delivered in payment of some obligation contracted at the time of the issuance or delivery of the check (People v. Lilius, 59 Phil. 339).

(c) The following crimes must be prosecuted upon complaint by the offended party:

1. Adultery;
2. Concubinage;
3. Seduction;
4. Abduction;
5. Rape;
6. Acts of lasciviousness; and
7. When the defamation imputes the commission of a crime which cannot be prosecuted *de officio*. (Arts. 344 and 360, Rev. Penal Code)

It is patent that the provision requiring that the proceedings must be initiated upon the complaint filed by the offended party or her relatives, was enacted out of consideration for the offended party and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial (Samiliin v. Court of First Instance, 57 Phil. 298).