

# Correcting an 80 Year-Old Mistake: A Review of the Indeterminate Sentence Law

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*If people are good only because they fear punishment, and hope only for reward,  
then we are a sorry lot indeed.*

— Albert Einstein<sup>1</sup>

## I. INTRODUCTION

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1. Carol Hoenig, A Sorry Lot, Indeed, *available at* [http://www.huffingtonpost.com/carol-hoenig/being-good-for-goodness-s\\_b\\_832391.html](http://www.huffingtonpost.com/carol-hoenig/being-good-for-goodness-s_b_832391.html) (last accessed Sep. 12, 2013).

It is a generally accepted fact that the purpose of a criminal action, consistent with the principle of retributive justice, “is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him, or, in general, to maintain social order.”<sup>2</sup> Corollary to such view is

the application of the theory that ‘criminal law is founded upon that moral disapprobation ... of actions which are immoral, i.e., which are detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society. This disapprobation is inevitable to the extent that morality is generally founded and built upon a certain concurrence in the moral opinions of all[.] That which [is] call[ed] punishment is only an external means of emphasizing moral disapprobation: the method of punishment is in reality the amount of punishment.’<sup>3</sup>

However, the Filipino nation, being a nation of forgivers,<sup>4</sup> has adopted a criminal justice system anchored on the more humane view of imposing penalties for the purpose of rehabilitating those convicted for violating our penal laws rather than punishing them.<sup>5</sup>

It is precisely because of the Filipino people’s belief in the inherent goodness of the human heart that, as an addition to the Revised Penal Code (RPC),<sup>6</sup> the Indeterminate Sentence Law (ISL)<sup>7</sup> was enacted and implemented.

The ISL, however, is not a new legislative invention. The ISL was originally used during the Middle Ages to discourage recidivism.<sup>8</sup> Later, anchored on the view that criminals were the responsibility of the state, the concept of imposing a maximum penalty for certain offenses was adopted for the purpose of curing the criminals with the end goal of reintegrating them

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2. *Panlilio v. Regional Trial Court, Branch 51, City of Manila*, 641 SCRA 438, 446 (2011) (citing *Ramiscal, Jr. v. Sandiganbayan*, 446 SCRA 166, 185 (2004)).

3. *Magno v. Court of Appeals*, 210 SCRA 471, 479 (1992) (citing *RAMON C. AQUINO, THE REVISED PENAL CODE I 11* (1987)).

4. *Volt Contreras, Filipinos Inherently Forgiving, Scholars Say*, *PHIL. DAILY INQ.*, Sep. 25, 2004, at A8.

5. *See People v. Ducosin*, 59 Phil. 109, 118 (1933).

6. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).

7. An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands, To Create a Board of Indeterminate Sentence and to Provide Funds Therefor, and for Other Purposes [The Indeterminate Sentence Law], Act No. 4103, as Amended (1933).

8. SALVADOR H. LAUREL, *LAUREL REPORT ON PENAL REFORMS: THE STATE OF PHILIPPINE PENAL INSTITUTIONS AND PENOLOGY* 245-46 (1969).

into society or restraining them from committing further offenses.<sup>9</sup> This was adopted under the idea of government benevolence, for a more effective policy of rehabilitation.<sup>10</sup> Consistent with this principle, the Supreme Court (SC) has previously held —

Keeping in mind the basic purpose of the [ISL] ‘to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness,’ it is necessary to consider the criminal, first, as an individual, and, second, as a member of society[.]

Considering the criminal as an individual, some of the factors that should be considered are: (1) [h]is age, especially with reference to extreme youth or old age, (2) his general health and physical condition, (3) his mentality, heredity[,] and personal habits, (4) his previous conduct, environment[,] and mode of life (and criminal record[,] if any), (5) his previous education, both intellectual and moral, (6) his proclivities and aptitudes for usefulness or injury to society, (7) his demeanor during trial and his attitude with regard to the crime committed, (8) the manner and circumstances in which the crime was committed, [and] (9) the gravity of the offense[.]

In considering the criminal as a member of society, his relationship, first, toward his dependents, family[,] and associates[,] and their relationship with him, and second, his relationship towards society at large and the [s]tate are important factors. The [s]tate is concerned not only [with] the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also [with] redeeming the individual for economic usefulness and other social ends. In a word, the [ISL] aims to individualize the administration of [Philippine] criminal law to a degree not [ ] known in the [country]. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.<sup>11</sup>

The ISL does not only mandate the imposition of an indeterminate penalty. It also establishes a parole board,<sup>12</sup> in consonance with the more extreme view of the proponents of this concept, which is to completely transfer the power of determining the time of release from the trial courts to another agency but always within the confines of a court to impose the indeterminate sentence.<sup>13</sup>

## II. THE INDETERMINATE SENTENCE LAW

Section 1 of the ISL provides —

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9. See *Ducosin*, 59 Phil. at 118-19.

10. *Id.* at 117-19.

11. *Id.*

12. The Indeterminate Sentence Law, § 3.

13. *Id.* § 5.

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the [RPC], or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the [RPC], and the minimum [of] which shall be within the range of the penalty next lower to that prescribed by the [RPC] for the offense[,] and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum prescribed by the same.<sup>14</sup>

The application of the ISL is mandatory<sup>15</sup> and, unless the case falls under Section 2,<sup>16</sup> the courts must apply a maximum and a minimum period in sentencing an accused. On the one hand, the maximum period (ISL Maximum) should be that which could be properly imposed under the circumstances, which means that any mitigating or aggravating circumstance must first be considered before determining the applicable ISL Maximum.<sup>17</sup> On the other hand, the minimum period (ISL Minimum) shall be the penalty within the range of the penalty next lower to that prescribed by the RPC, without considering any modifying circumstance attendant to the commission of the crime.<sup>18</sup>

In *People v. Ducosin*,<sup>19</sup> the SC ruled thus —

This leads up to the important question: How shall the ‘maximum’ and the ‘minimum’ penalty be determined?

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14. *Id.* § 1.

15. *People v. Lee, Jr.*, 132 SCRA 66, 67 (1984).

16. The Indeterminate Sentence Law, § 2. This Section provides —

Section 2. [The Indeterminate Sentence Law (ISL)] shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, nor to those already sentenced by final judgment at the time of approval of [the ISL], except as provided in Section 5 hereof.

*Id.*

17. Harold Huliganga, Revisiting “ISLAW,” available at [http://ca.judiciary.gov.ph/index.php?action=mnuactual\\_contents&ap=j90210&p=y](http://ca.judiciary.gov.ph/index.php?action=mnuactual_contents&ap=j90210&p=y) (last accessed Sep. 12, 2013).

18. *Id.*

19. *Ducosin*, 59 Phil. at 109.

The maximum penalty must be determined, in any case punishable by the [RPC], in accordance with the rules and provisions of [the RPC] exactly as if [the ISL] had never been passed. [The Court] think[s] it is clear from a reading of [the ISL] that it was not its purpose to make inoperative any of the provisions of the [RPC]. Neither the title nor the body of the [ISL] indicates any intention on the part of the [L]egislature to repeal or amend any of the provisions of the [RPC]. ... The legislative history of the [ISL] further shows that attention was called to the necessity [of] taking care ‘so as not to bring the provisions of [the ISL] in conflict with the provisions of [the Philippine] penal laws, especially with those treating with penalties.’

[The Committee Report of the Ninth Philippine Legislature] gives an illustration of the application of the [ISL] to offenses penalized by the [RPC]:

‘Suppose that a man is found guilty of malversation of public funds in the amount of [₱10,000.00]. No mitigating [or] aggravating circumstances are present. Under [the ISL,] the court may impose on him a maximum sentence not exceeding [10] years and eight months but not less than nine years, four months[,] and one day, and a minimum which shall not be less than four years, two months[,] and one day. ... The court, therefore, may sentence the accused to be imprisoned for not less than five years nor more than [10] years or for not less than seven years nor more than [10] years and eight months, etc.’

It will be seen from the foregoing example that the ‘maximum’ is determined in accordance with the provisions of the [RPC]. In the example given[,] reference is made to [A]rticle 217, [P]aragraph 3 of the [RPC] which provides that the defendant shall suffer the penalty of *prisión mayor* in its medium and maximum period. The penalty is placed in the medium degree because of the absence of mitigating or aggravating circumstance, that is to say, anywhere between nine years, four months[,] and one day and [10] years and eight months[,] in the discretion of the court. In the case on appeal here[,] the penalty was imposed in the minimum of the proper penalty under the [RPC] because of the plea of guilty, that is to say, between [10] years and one day and [12] years[,] in the discretion of the court. This discretion is in no wise impaired or limited by [the ISL]. The trial court, in conformity with the discretion conferred upon it by the [RPC], might have assessed the penalty at ... [11] years. [The Court] wish[es] to make it clear that [the ISL] does not require [the] [C]ourt to assess the said penalty at 12 years, which is the longest time of imprisonment within the minimum degree.

[The Court finds] that [ ] [10] years and one day of imprisonment conforms to the provisions and rules of the [RPC] and is therefore fixed and established as the maximum of the sentence which shall be imposed upon the appellant.

[The Court will now] determine the ‘minimum imprisonment period’ referred to in [the ISL]. Section 1 of the [ISL] provides that this ‘minimum [ ] shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by [the RPC] for the offense.’ ... It is in

determining the ‘minimum’ penalty that [the ISL] confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. *The determination of the ‘minimum’ penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits.*<sup>20</sup>

Indeed, prior to the enactment of the ISL, one need not be concerned with determinations of “maximum” and “minimum” terms, accordingly imposed by the ISL.<sup>21</sup> Straight penalties were fixed by the court and were to be modified only by specific provisions of the RPC.<sup>22</sup>

Since its enactment, however, the ISL has been mandatory, to wit —

The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the [RPC] or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.<sup>23</sup>

Fixing the “minimum” term of the indeterminate sentence, on one hand, is particularly of great import.<sup>24</sup> Once such minimum term is served,

the Board of Indeterminate Sentence, from the reports of the prisoner’s works and conduct[,] which may be received in accordance with the rules and regulations prescribed, and from the study and recommendation made by the Board itself, that such prisoner is fitted by his training for release, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the law, and that such release will not be incompatible with the welfare of society, said Board [ ] may, in its discretion, and in accordance [with] the rules and regulations adopted hereunder, authorize the release of such prisoner on parole, upon such terms and conditions as are herein prescribed and as may be prescribed by the Board.<sup>25</sup>

This, however, is not an automatic guarantee because as already mentioned, it must appear that “such prisoner is fitted by his training for release that there is reasonable probability that such prisoner will live and

20. *Id.* at 114-16 (citing Committee Report, H. Rep. No. 3321, 9th Philippine Legislature, 3d Reg. Sess. (1915) & REVISED PENAL CODE, arts. 217 (3) & 6, ¶ 1 (emphasis supplied)).

21. Hulganga, *supra* note 17.

22. *Id.* (citing REVISED PENAL CODE, arts. 46, 48, 50-57, 61-62, 64-65, 68-69, & 71).

23. *Batistis v. People*, 608 SCRA 335, 348 (2009).

24. *See* The Indeterminate Sentence Law, § 5.

25. The Indeterminate Sentence Law, § 5.

remain at liberty without violating the law, and that such release will not be incompatible with the welfare of society[.]”<sup>26</sup> As such, a convict shall continue to serve his sentence if he is not fit for release by the Board despite serving the “minimum” term imposed. In *People v. Simon*,<sup>27</sup> the SC held thus —

The ‘minimum’ sentence is merely a period at which, and not before, as a matter of grace and not of right, the prisoner may merely be allowed to serve the balance of his sentence outside of his confinement. It does not constitute the totality of the penalty since thereafter, he still has to continue serving the rest of his sentence under set conditions. That minimum is only the period when the convict’s eligibility for parole [ ] may readily be denied if he is found unworthy thereof, or his [incarceration] may be ordered on legal grounds, even if he has served the minimum sentence.<sup>28</sup>

Accompanying the convict’s supervised release is a Probation Order containing the terms and conditions which the convict should comply with.<sup>29</sup> Violations of any of such conditions will warrant an arrest.<sup>30</sup> In such case, the prisoner shall serve the remaining unexpired portion of his maximum sentence for which he was originally committed to prison.<sup>31</sup>

#### A. Exception to the Rule

Section 2 of the ISL provides for the specific instances where the law shall not be applicable —

Section 2. [The ISL] shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, nor to those already sentenced by final judgment at the time of approval of [the ISL], except as provided in Section 5 hereof.<sup>32</sup>

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26. *Id.*

27. *People v. Simon*, 234 SCRA 555 (1994).

28. *Id.* at 582.

29. Department of Justice, Rules and Regulations Implementing the Probation Law of 1976, Presidential Decree No. 968, § 33 (Jan. 29, 2004).

30. *Id.* § 50.

31. *Id.* § 52 (b).

32. The Indeterminate Sentence Law, § 2.

In 20 April 1951, the SC added another exception.<sup>33</sup> In *People v. Nang Kay*,<sup>34</sup> the accused was found guilty of illegal possession of firearms for which the Court sentenced him to suffer the penalty of imprisonment of five years and one day.<sup>35</sup> The SC, in so ruling and meting a straight penalty of imprisonment for a period of five years and one day, said that the offense for which Nang Kay was found guilty was punished with imprisonment of not less than five years nor more than 10 years.<sup>36</sup> An application of the ISL would have meant that accused Nang Kay was to serve imprisonment from five years to 10 years, more or less.<sup>37</sup> Justifying the straight penalty meted, the Court had the occasion to emphasize that applying the ISL in such case would run counter to its spirit.<sup>38</sup> The SC ruled that —

[The Court is], therefore, of the opinion and hold[s] that in cases where the application of the [ISL] would be unfavorable to the accused, resulting in the lengthening of his prison sentence, [the ISL] should not be applied. Under this opinion, it is obvious that the trial court did not err in sentencing the appellant to imprisonment for five years and one day.<sup>39</sup>

In 16 December 2009, or 58 years later, the SC recognized the exception to the general rule of mandatory application set forth under the *Nang Kay* ruling in *People v. Batistis*.<sup>40</sup> Thus, since the SC's pronouncement in 1951, it has been the prevailing doctrine that in cases where the application of the ISL would result in the lengthening of the prison sentence, the ISL should not be applied.<sup>41</sup>

### III. THE 80 YEAR-OLD MISTAKE

A survey of Criminal Law jurisprudence will show that among the portions of the rulings of trial courts and appellate courts that are most commonly corrected by the SC is the application of the ISL.<sup>42</sup> In fact, even the SC has

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33. *People v. Nang Kay*, 88 Phil. 515 (1951).

34. *Id.*

35. *Id.* at 520.

36. *Id.* at 518.

37. *Id.* at 519.

38. *Id.* at 520.

39. *Nang Kay*, 88 Phil. at 520.

40. *See Batistis*, 608 SCRA at 348.

41. *See Nang Kay*, 88 Phil. at 520.

42. *See generally* *People v. Moises*, 66 SCRA 151 (1975) overturning *People v. Colman, et al.*, 103 Phil. 6 (1958); *People v. Gonzales*, 73 Phil. 549 (1942) overturning *People v. Co Pao*, 58 Phil. 545 (1933); & *People v. Mape*, 77 Phil. 809 (1947) reversing *People v. Haloot*, 64 Phil. 739 (1937).



grappled with the matter.<sup>43</sup> Sadly, despite the numerous cases and reversals made by the SC, it still failed to correctly apply the ISL in cases where there is a privileged mitigating circumstance or at least two mitigating circumstances, with no aggravating circumstance attendant in a case.<sup>44</sup> In cases involving ordinary modifying circumstances, the application of the ISL is rather simple. The SC has consistently applied and upheld the procedure to be followed in imposing the correct indeterminate penalty in such cases.<sup>45</sup>

Table 1. Penalties Imposed for Homicide Using the Correct Indeterminate Interpretation

CRIME	INDETERMINATE PENALTY	
	MAXIMUM:	MINIMUM:
HOMICIDE (Penalty Prescribed: <i>Reclusión Temporal</i> )		
Attending Circumstance: No mitigating and aggravating circumstances	<i>Reclusión temporal</i> in its medium period	<i>Prisión mayor</i> in any of its periods
Attending Circumstance: One ordinary mitigating circumstance and no aggravating circumstance	<i>Reclusión temporal</i> in its minimum period	<i>Prisión mayor</i> in any of its periods
Attending Circumstance: One aggravating circumstance and no mitigating circumstance	<i>Reclusión temporal</i> in its maximum period	<i>Prisión mayor</i> in any of its periods
Attending Circumstance: Two aggravating circumstance and one mitigating circumstance	<i>Reclusión temporal</i> in its maximum period	<i>Prisión mayor</i> in any of its periods

In the foregoing examples, the application of the ISL creates no problem. Under Section 1, the SC merely applied the unequivocal

43. *Id.*

44. See *Lee Jr.*, 132 SCRA at 67.

45. See *People v. Temporada*, 574 SCRA 258, 286 (2008).

provisions of the ISL.<sup>46</sup> However, the same cannot be said to be true when there are privileged mitigating circumstances and/or there are at least two mitigating circumstances, with no aggravating circumstance.

The problem started in the very first case decided by the SC involving the ISL.<sup>47</sup> In *Ducosin*, the SC ruled that to “construe the expression in Section 1[,] ‘the penalty next lower to that prescribed by the [RPC] for the offense’ [should] mean the penalty next lower to that determined by the court in the case before it as the maximum[.]”<sup>48</sup> Instead of going one degree lower from “that prescribed by the [RPC],” the SC, in fixing the minimum, went one degree lower from the maximum.<sup>49</sup> The SC did not merely perform its function of judicial interpretation but engaged in the prohibited act of judicial legislation.<sup>50</sup>

It is important to differentiate *prescribed penalty*,<sup>51</sup> *imposable penalty*,<sup>52</sup> and *penalty actually imposed*.<sup>53</sup> The prescribed penalty is the penalty that the RPC

46. The Indeterminate Sentence Law, § 1.

47. See *Ducosin*, 59 Phil. at 109.

48. *Id.* at 116.

49. *Id.* at 117.

50. According to Former Supreme Court (SC) Justice Myrna Dimaranan-Vidal —

The Judiciary has been invariably perceived as the weakest among the three branches of government considering that it does not have the power of the purse, nor does it have the power of the sword. The [C]onstitution only vested it with a pen to interpret the laws including the [C]onstitution itself. On the contrary, with the words that flow from its judicial pen, the Judiciary may likewise be described as the strongest branch since it has the power to pronounce, with certainty, that a law is invalid. And the people, including the other branches of government, have no choice but to obey its decree.

...

Through the years, the Judiciary, in taking its pen to strike at governmental actions, has been accused of legislating, instead of interpreting laws. Judicial legislation takes place when a court steps in to craft missing parts or to fill in the gaps in laws or when it oversteps its discretionary boundaries and goes beyond the law to coin doctrines or principles where none was before.

Myrna Dimaranan-Vidal, *Judicial Legislation: Dissected*, available at [http://ca.judiciary.gov.ph/index.php?action=mnuactual\\_contents&ap=j60200&p=y](http://ca.judiciary.gov.ph/index.php?action=mnuactual_contents&ap=j60200&p=y) (last accessed Sep. 12, 2013).

51. BERNARDO P. PARDO, THE APPLICATION AND GRADUATION OF PENALTIES UNDER THE REVISED PENAL CODE AND THE INDETERMINATE SENTENCE LAW 78 (2011) (citing *Temporada*, 574 SCRA at 286) (emphasis supplied).

52. *Id.*

53. *Id.* at 79.

originally provided without appreciating the attendant circumstances.<sup>54</sup> Thus, for the crime of homicide, the prescribed penalty is *reclusion temporal*.<sup>55</sup> The imposable penalty is the penalty as modified to be imposed after appreciating the attending circumstances.<sup>56</sup> Thus, for the crime of homicide, if no attending circumstances are present, the imposable penalty is *reclusion temporal* in the medium period.<sup>57</sup> The penalty actually imposed is the exact penalty imposed by the judge on the convict that should be within the imposable penalty.<sup>58</sup> To demonstrate, *People v. Dimalanta*<sup>59</sup> held —

With regard to the contention of the appellant that he should have been given the benefits of the [ISL], it is clear that he is not entitled to them for the reason that the penalty imposed upon him does not exceed one [ ] year. The application of the [ISL] is based upon the penalty *actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court*.<sup>60</sup>

However, such indeterminate sentence must always be within the confines of the law, otherwise, such a judgment is considered void.<sup>61</sup>

In fixing the ISL minimum, however, the courts should consider the penalty that is one degree lower from the prescribed penalty and not from the imposable penalty or the penalty actually imposed.<sup>62</sup> This is clear from a plain reading of Section 1 of the ISL.<sup>63</sup>

The correct application of the ISL has been explained in *People v. Gabres*,<sup>64</sup> as follows —

Under the [ISL], the maximum term of the penalty shall be ‘that which, in view of the attending circumstances, could be properly imposed’ under the [RPC], and the minimum shall be ‘within the range of the penalty next lower to that prescribed’ for the offense. The penalty next lower should be based on the penalty prescribed by the [RPC] for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of

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54. *Id.* at 78.

55. REVISED PENAL CODE, art. 249.

56. PARDO, *supra* note 51, at 78.

57. REVISED PENAL CODE, art. 64.

58. PARDO, *supra* note 51, at 79.

59. *People v. Dimalanta*, 92 Phil. 239 (1952).

60. *Id.* at 242 (citing The Indeterminate Sentence Law, § 2) (emphasis supplied).

61. *Dimalanta*, 92 Phil. at 242.

62. PARDO, *supra* note 51, at 67.

63. The Indeterminate Sentence Law, § 1.

64. *People v. Gabres*, 267 SCRA 581 (1997).

the penalty next lower[,] without any reference to the periods into which it might be subdivided. *The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.*<sup>65</sup>

However, in cases where the modifying circumstance is a privileged mitigating circumstance or at least two ordinary mitigating circumstances without any aggravating circumstance, the SC considers the modifying circumstances in the imposition of both the ISL Maximum and the ISL Minimum devoid of any justification as to why there is a departure from the provisions of the ISL.<sup>66</sup> In *People v. Cesar*,<sup>67</sup> the SC ruled —

The proper method is to start from the penalty imposed by the [RPC], i.e., *reclusion temporal*[,] then apply the privileged mitigating circumstance of minority and determine the penalty immediately inferior in decree, i.e., *prisión mayor*[,] and finally apply the same in the maximum degree but within the minimum range thereof because of the ordinary mitigating circumstance of plea of guilty. *Prisión mayor*, being the maximum of the indeterminate sentence, the minimum of the indeterminate sentence penalty is within the range of the penalty next lower to it as prescribed by the [RPC], i.e., *prisión correccional*.<sup>68</sup>

In *People v. Lee Jr.*,<sup>69</sup> the penalty for homicide, which was attended by two mitigating circumstances without any aggravating circumstance, was set at *prisión mayor minimum*<sup>70</sup> as the ISL Maximum and *prisión correccional* as the ISL Minimum.<sup>71</sup> By going one degree lower from the maximum, the SC not only engaged in judicial legislation as discussed above, but also contradicted their own pronouncement that modifying circumstances are considered only in fixing the ISL Maximum.<sup>72</sup>

#### A. Comparison of Indeterminate Penalties Imposed Based on the Current and Correct Interpretations

In favor of the current interpretation, it is argued that the ISL should be construed liberally and interpreted in favor of the accused.<sup>73</sup> This is true if the ISL is a penal law.<sup>74</sup> “A penal law is an act of the [L]egislature that

65. *Id.* at 595-96 (emphasis supplied).

66. *People v. Cesar*, 22 SCRA 1024 (1968).

67. *Id.*

68. *Cesar*, 22 SCRA at 1027-28.

69. *Lee Jr.*, 132 SCRA at 67.

70. It should be *prisión mayor* medium. See *Basan v. People*, 61 SCRA 275, 277 (1974).

71. *Lee Jr.*, 132 SCRA at 67.

72. *Huliganga*, *supra* note 17.

73. *Temporada*, 574 SCRA at 268 (J. Corona, separate opinion).

74. *Id.*

prohibits certain acts and establishes penalties for its violation.”<sup>75</sup> The dissenting opinion of former SC Chief Justice Reynato Puno in *People v. Temporada*<sup>76</sup> is enlightening —

A penal law is an act of the [L]egislature that prohibits certain acts and establishes penalties for its violations. [A] closer look at the ISL, however, reveals that it does not make any act punishable. Its complete title is telling: ‘An Act [t]o Provide [f]or An Indeterminate Sentence [a]nd Parole [f]or All Persons Convicted [o]f Certain Crimes [b]y [t]he Courts [o]f [t]he Philippine Islands[,] [t]o Create A Board [o]f Indeterminate Sentence [a]nd [t]o Provide Funds Therefor[,] [a]nd [f]or Other Purposes.’ Moreover, the classification of the ISL as penal was made arbitrarily and without clear legal basis. [*Nang Kay*], which cited the *Corpus Juris Secundum*, points to the [United States (U.S.)] case of *State v. Groos* as its authority for saying that the ISL is a penal statute. A perusal of the said U.S. case reveals, however, that the penal character of the ISL was not put into issue in that case, and that it was merely assumed that the ISL [was] a penal law. Accordingly, [it] is submit[ted] that the presumption of innocence [cannot] be used in granting leniency in the computation of the minimum in the ISL.<sup>77</sup>

Table 2. Comparison of the Current and Correct Interpretations of the ISL

CRIME: HOMICIDE	INDETERMINATE PENALTY BASED ON CURRENT INTERPRETATION		INDETERMINATE PENALTY BASED ON CORRECT INTERPRETATION	
	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM
One privileged mitigating circumstance or Two ordinary mitigating circumstances	<i>Prisión mayor</i> in its medium period	<i>Prisión correccional</i> in any of its periods	<i>Prisión mayor</i> in its medium period	<i>Prisión mayor</i> in its minimum period <sup>78</sup>

75. *Id.* at 316-17 (C.J. Puno, dissenting opinion).

76. *Id.*

77. *Id.*

78. It can arguably be as high as *prisión mayor* medium as long as it is lower than the ISL Maximum imposed. Also, while the determination of the ISL Minimum is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower, it will be grave abuse of discretion on the part of the court if the ISL Minimum fixed is higher than ISL Maximum. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. See PARDO, *supra* note 51, at 68 (emphasis supplied).

*B. When ISL Should Not Be Applied*

Aside from the cases mentioned in Section 2 of the ISL<sup>79</sup> and the *Nang Kay* exception<sup>80</sup> as discussed above, the ISL should not be applied if it will result in absurdity. The Legislature surely does not intend any absurdity in the laws it makes.<sup>81</sup> In cases where the ISL, if applied correctly, will result in the ISL Minimum being higher than the ISL Maximum, the ISL should not be applied. The courts should instead impose a straight penalty. As William Blackstone says, “a man cannot suffer more punishment than the law assigns, but he may suffer less.”<sup>82</sup> This interpretation will not only be within the confines of the law but will also be consistent with the *Nang Kay* exception.<sup>83</sup> It must be pointed out that ISL does not prohibit the imposition of a straight penalty.<sup>84</sup> Therefore, in cases where there are two privileged mitigating circumstances or one privileged mitigating circumstance and at least two ordinary mitigating circumstances attendant to the commission of the crime, which will lower the penalty by two degrees, the ISL should not be applied.

Table 3. Comparison of the Current and Correct Interpretations of the ISL that Lower the Penalty by Two Degrees

CRIME: HOMICIDE	INDETERMINATE PENALTY BASED ON CURRENT INTERPRETATION		INDETERMINATE PENALTY BASED ON CORRECT INTERPRETATION	
	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM
Attending Circumstance: One privileged mitigating circumstance and Two ordinary	<i>Prisión correccional</i> in its medium period	<i>Arresto mayor</i> in any of its periods	<i>Prisión correccional</i> in its medium period	<i>Prisión mayor</i> in any of its periods

79. The Indeterminate Sentence Law, § 2.

80. *Nang Kay*, 88 Phil. at 519-20.

81. It is well-settled that courts are not to give a statute a meaning that would lead to absurdities. It is the court’s duty to construe the statute in such a way as to avoid such consequences. For Congress could not have intended an absurd interpretation of the law. See RUBEN E. AGPALO, STATUTORY CONSTRUCTION 235-36 (2009).

82. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 76 (1753).

83. *Nang Kay*, 88 Phil. at 519-20.

84. See PARDO, *supra* note 51, at 74.

mitigating  
circumstances  
(effectively,  
this will lower  
the penalty by  
two degrees)

Applying the correct interpretation of the ISL would thus lead to absurdity since obviously, the ISL Minimum is higher than the ISL Maximum based on the graduation of penalties. Thus, instead of applying the correct interpretation (appreciating modifying circumstances in the imposition of the ISL minimum), the more proper application calls for meting out a straight penalty, consistent with the *Nang Kay* exception<sup>85</sup> and with the ISL.

### C. Steps to Follow in Applying the ISL

If a crime is punishable under a special penal law,<sup>86</sup> the ISL Maximum shall not exceed the maximum fixed by the special law and the ISL Minimum shall not be less than the minimum prescribed by said law.<sup>87</sup> However, it should be noted that in cases where the special law involved makes use of the penalties under the RPC in their technical terms, the rule is different.<sup>88</sup> The SC has previously pointed out —

[W]here although the offense is defined and ostensibly punished under a special law, the penalty therefor is actually taken from the [RPC] in its technical nomenclature and, necessarily, [it is adopted] with its duration, correlation[,] and legal effects under the system of penalties native to [the RPC].

...

[R]epublic Act [(R.A.)] No. 6425, as now amended by [R.A.] No. 7659, has unqualifiedly adopted the penalties under the [RPC] in their technical terms, hence with their technical signification and effects. In fact, for purposes of determining the *maximum* of said sentence, [the Court] applied the provisions of the amended Section 20 to arrive at *prisión correccional* and Article 64 of the [RPC] to impose the same in the medium period. Such offense, although provided for in a special law, is now in effect *punished by and under the [RPC]*. Correlatively, to determine the minimum, [the Court]

85. *Nang Kay*, 88 Phil. at 519-20.

86. Special penal laws, passed by the Philippine Commission, Philippine Assembly, Philippine Legislature, National Assembly, the Congress of the Philippines, and the Batasan Pambansa are regarded as one of the sources of Criminal Law in the Philippines. See LUIS B. REYES, *THE REVISED PENAL CODE BOOK ONE I* (18th ed. 2012).

87. *Huliganga*, *supra* note 17.

88. *Id.*

must apply the first part of the aforesaid Section 1 [of the ISL] which directs that in imposing a prison sentence for an offense punished by the [RPC], or its amendments, the court shall sentence the accused to an indeterminate sentence the *maximum* term of which shall be that which, in view of the attending circumstances, could be properly imposed *under the rules of said [RPC]*, and the *minimum* which shall be within the range of the *penalty next lower to that prescribed by the [RPC]* for the offense.<sup>89</sup>

If the penalty imposed is exactly the minimum prescribed by law, the ISL should not be applied and the court should instead impose a straight penalty.

If a crime is punishable under the RPC, these are the rules:

- (1) Determine if the ISL is applicable such as when the penalty to be imposed is imprisonment and the case does not fall under Section 2 of the ISL.
- (2) If the ISL is applicable, fix the ISL Maximum and the ISL Minimum.
- (3) The ISL Maximum shall be within the prescribed penalty under the RPC for the offense taking into consideration all modifying circumstances.
- (4) The ISL Minimum shall be within the range of the penalty next lower to that prescribed by the RPC for the offense without considering the modifying circumstances.
- (5) If the ISL Maximum is lower than the ISL Minimum, do not apply the ISL and impose instead a straight penalty.<sup>90</sup>

#### IV. CONCLUSION

The balancing of the state's interest in deterrence and retributive justice *vis-à-vis* reformation and reintegration of convicts into society is exclusively within the domain of the Legislature.<sup>91</sup> The SC, in applying the ISL in the last 80 years, has gone beyond what the law prescribes.

It is important for law students to continuously examine the law and jurisprudence, to question what may or may not be a mistake, to test the views of others and, for others to test his or her views. The learning process in law should never cease. The desire to learn should never wane.

This is the only way we can correct our mistakes.

This is the only way we can improve the legal system.

This is the only way we can serve justice.

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89. *Simon*, 234 SCRA at 574 & 581 (emphasis supplied).

90. *Huliganga*, *supra* note 17.

91. *Temporada*, 574 SCRA at 295.