

appearance is attended by dangerous circumstances, an earlier presumption of time of death takes place. As is the claim of some authorities in this jurisdiction, the lapse of the requisite period merely confirms the probability of death. Consequently, whoever asserts death at any other period has the burden of proof.

We gather from the same authorities that on the presumption of time of death based on ordinary absence, there is a disparity of opinion. In this jurisdiction, however, the Anglo-American rule of non-presumption, espoused by former Chief Justice Moran, and to some extent by Professor Caguioa, and adopted by the Court of Appeals, seems to be the rule.

But for the purpose of this thesis, and consistent with the theory of correlation between the rules of presumption of death, on the one hand, and the rules of survivorship, on the other, which this thesis has advanced, it is submitted here that even the presumption of death based on ordinary absence carries a presumption of time of death which may be earlier than the expiration of the period therein provided by law.

The queries, subject of this thesis, are accordingly answered.

REFERENCE DIGEST

CRIMINAL LAW: "SHOOT TO KILL": ITS MORAL AND LEGAL ASPECTS. — The Fifth of the Ten Commandments of God enjoins man: "*Thou shalt not kill.*" The injunction is absolute and imperative. For, "*Vengeance is mine, I will repay, saith the Lord.*" Yet, biblical passages may be cited sustaining the morality of taking human life. Thus God said to Noah: "*Whosoever shall shed man's blood, his blood shall be shed; for man was made to the image of God.*" And this was the code of justice that the Lord gave to the Israelites when freed under Moses from Egyptian bondage.

Human positive law prohibits the taking of human life. It punishes it as homicide. But it has due regard for the weakness of human nature that it does not oblige a person without fault to fly from an assault by another who by violence or surprise maliciously seeks to take his life or do him great bodily harm. Applied to overcoming resistance to arrest for felony, an officer or a private person may employ such force as may be necessary, even to the extent of taking the life of the felon. The killing, to be justified, however, must be necessary, not merely reasonably necessary. Distinction must also be drawn as to the person making arrest, for a peace officer enjoys wider latitude in overcoming resistance than a civilian.

The superior who issues the "shoot to kill" order answers for all acts within the scope of his order, and his only defense is the legality of said order. The subordinate who executes the order incurs no liability, unless he transcends the bounds of the order or, though acting within its confines, such order shows on its face illegality or want of authority.

The article cites a good amount of illustrative cases, foreign as well as domestic. (Andres T. Quiaoit, "*Shoot to Kill: Its Moral and Legal Aspects*," X THE LAW REVIEW NO. 2, at 125-133 (1959). P2.00 at the University of Santo Tomas, Manila. This issue also contains: Bautista Angelo, *The Supreme Court in Relation to Workmen's Compensation Cases*; Andrada, *Amenability of Persons to the Jurisdiction of Courts-Martial*.)

POLITICAL LAW:* AMENABILITY OF PERSONS TO THE JURISDICTION OF COURTS-MARTIAL. — The Jurisdiction of a court-martial is its power to try and determine cases legally referred to it and to impose the punishment within the limits prescribed by law. It

* By the Section Editor.

is conferred by the Articles of War, and by other enactments of Congress of similar character in pursuance to authority conferred upon that body by the Constitution. There can be no presumption of jurisdiction in favor of a court-martial beyond that which is delegated to it by statute, and unless constituted as provided for by law it is not a legal tribunal.

The indispensable conditions or requisites to show jurisdiction of every court-martial, and, hence, the validity of its judgements, are the following: (a) that it is convened by an officer empowered by law to appoint it; (b) that the persons sitting upon the court are legally competent to do so; (c) that the court thus constituted is invested by Acts of Congress with power to try the person and the offense charged; and (d) that the sentence imposed is in accordance with law. When the foregoing requisites are satisfied, the proceedings of a court-martial are not open to review or revision by civil courts, except for the purpose of determining whether the court-martial had jurisdiction over the person of the accused and subject matter or offense charged, and whether, though having such jurisdiction, it has exceeded its power in the sentence pronounced.

Persons amenable to the jurisdiction of courts-martial are grouped into two categories, namely, military personnel and civilians. The first is further classified into: (1) commissioned officers of the regular force; (2) reserve officers; and (3) enlisted men. Their amenability to the jurisdiction of courts-martial commences from the date of their entry into the service and terminates upon discharge without prejudice to court-martial proceedings pending at the time. Within the scope of the jurisdiction of courts-martial are the following civilians: (1) retainers to the camp; (2) persons serving with the Armed Forces in the field; and (3) those who accompany the Armed Forces, the last two being applicable only in time of war or when martial law is declared. Their amenability terminates upon passing the area of actual operation or upon the official declaration of the end of hostilities.

The article also contains a brief discussion on the concurrent jurisdiction of courts-martial and civil tribunals. (Lorenzo Andrada, *Amenability of Persons to the Jurisdiction of Courts-Martial*, X THE LAW REVIEW NO 2, at 116-117 (1959). ₱2.00 at the University of Santo Tomas, Manila. This issue also contains: Bautista Angelo. *The Supreme Court in Relation to Workmen's Compensation Cases*; Quiaoi, "Shoot to Kill." *It's Moral and Legal Aspects*.)

LEGISLATION

POLITICAL LAW: CITY GOVERNMENTS. — In American law the term "city" has no definite technical import. It may be territorially a political division of a town. It has been held to be a political division of a state. The Supreme Court of the United States once remarked the "city is a miniature state."¹ In the Philippines, chartered cities are political bodies corporate endowed with the attribute of perpetual succession and possessed of the powers which pertain to municipal corporations exercised in accordance with the provisions of their respective charters.²

For a country like the Philippines, chartered cities are mushrooming. We can print at least 30 in this report. These are Bacolod,³ Baguio,⁴ Basilan,⁵ Butuan,⁶ Cabanatuan,⁷ Cagayan de Oro,⁸ Calbayog,⁹ Cavite,¹⁰ Cebu,¹¹ Cotabato,¹² Dagupan,¹³ Davao,¹⁴ Dumaguete,¹⁵ Iligan,¹⁶ Iloilo,¹⁷ Legaspi,¹⁸ Lipa,¹⁹ Marawi,²⁰ Manila,²¹ Naga,²² Ormoc,²³ Ozamiz,²⁴ Pasay,²⁵ Quezon,²⁶ Roxas,²⁷ San Pablo,²⁸ Tacloban,²⁹ Tagaytay,³⁰ Trece Martires,³¹ and Zamboanga.³²

¹ MARTIN, PUBLIC CORPORATIONS (1958 rev. ed.) 236, citing I MC-QUILLIN. MUN. CORP., 34d ed. 488.

² *Id.*, at 238.

³ Com. Act No. 326.

⁴ Chap. 61, REV. ADM. CODE, as amended.

⁵ Rep. Act No. 288.

⁶ Rep. Act No. 523.

⁷ Rep. Act No. 526.

⁸ Rep. Act No. 521.

⁹ Rep. Act No. 328.

¹⁰ Com. Act No. 547.

¹¹ Com. Act No. 58.

¹² Rep. Act No. 2364.

¹³ Rep. Act No. 170.

¹⁴ Com. Act No. 51.

¹⁵ Rep. Act No. 327.

¹⁶ Rep. Act No. 525.

¹⁷ Com. Act No. 158.

¹⁸ Rep. Act No. 2234.

¹⁹ Rep. Act No. 162.

²⁰ Rep. Act No. 1552.

²¹ Rep. Act No. 409.

²² Rep. Act No. 305.

²³ Rep. Act No. 179.

²⁴ Rep. Act No. 301.

²⁵ Rep. Act No. 183, as amended by Rep. Act No. 437.

²⁶ Rep. Act No. 537.

²⁷ Rep. Act No. 603.

²⁸ Com. Act No. 520.

²⁹ Rep. Act No. 760.

³⁰ Com. Act No. 338.

³¹ Rep. Act No. 981.

³² Com. Act No. 39.