

# JUSTIFYING AND EXEMPTING CIRCUMSTANCES: AN OVERVIEW

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Conceptually, in a justifying and exempting circumstance the accused does not incur any criminal liability. The rationale of a justifying circumstance is that the act committed is in accordance with law, so that it is considered that the actor has not infringed the law, and therefore he does not incur any criminal nor civil liability. The source of the civil liability which is the delict is absent. While it is true that in the justifying circumstance of state of necessity<sup>1</sup> Article 101, par. 2 of the Revised Penal Code, provides for civil liability, such, however, does not devolve upon the actor but "upon the persons for whose benefit the harm has been prevented x x x in proportion to the benefit which they may have received." On the other hand, in an exempting circumstance, a crime is committed, but there is a complete absence of any of the elements or conditions of voluntariness of the act. Since the crime is not committed voluntarily, the offender is not criminally liable although he is civilly liable because the crime, which is the source of the obligation, is present.

Whereas, a justifying circumstance inheres in the act committed, which is lawful, an exempting circumstance is personal to the offender. In essence, in a justifying circumstance there is a crime but there is no criminal.

## JUSTIFYING CIRCUMSTANCES

The justifying circumstances are self-defense, defense of relatives, defense of stranger, state of necessity, fulfillment of duty or exercise of a right and obedience to superior order.<sup>2</sup>

### 1. Self-Defense – Basis and Rationale

In the case of *People v. Boholst-Caballero*<sup>3</sup> the basis of self-defense was culled by the Supreme Court from continental renowned criminologists<sup>4</sup> as follows:

"To the Classicist in penal law, lawful defense is grounded on the impossibility on the part of the State to avoid a present unjust aggression and protect a

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person unlawfully attacked, and therefore it is inconceivable for the State to require that the innocent succumb to an unlawful aggression without resistance; while to the Positivist, lawful defense is the exercise of a right. An act of social justice done to repel the attack of the aggressor."

In synthesis, the rational ground is man's impulse of self-preservation to protect himself from any actual or imminent danger to his person or rights.<sup>5</sup> As stated expressively in another case:

"In emergencies of this kind, human nature does not act upon process of human reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon his instinct, it is the duty of the courts to sanction the act and hold the actor irresponsible in law for the consequences." (People vs. Padua' CA 40 O.G. 882), (People vs. Aquino' 54 SCRA 409)

### Elements To Be Proved

For self-defense to exist the accused must present convincing, positive, and sufficient evidence 1) that the accused is not the lawful aggressor; 2) that there was lack of sufficient provocation on his part; and 3) that he employed reasonable means to prevent or repel the aggression.<sup>6</sup> The accused must depend on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved since the accused has admitted the killing.<sup>7</sup>

### Unlawful Aggression

This is the main and primal element of self-defense. Without unlawful aggression, there can be no self-defense, whether complete or incomplete.

Unlawful aggression is equivalent to assault or at least threatened assault of immediate and imminent kind. It presupposes an action positively strong showing the wrongful intent of the aggressor, not merely a threatening or intimidating attitude, but a material attack.<sup>8</sup> There must be real or imminent danger to life or personal safety. Brandishing a knife with which to attack a person or pointing a gun to discharge against another are examples given by *Viada*.<sup>9</sup> Where the accused alleged that he struck the deceased because after insulting him he thrust his hand into his pocket as if for the purpose of drawing a dagger or a pocket knife, as the accused believed he was about to attack him, it was held there was no unlawful aggression as it was not shown that the deceased carried in his pocket any weapon, so that there was not even an actual or imminent risk of an attack upon the accused.<sup>10</sup> A mere push or a shove, not followed by other acts or a playful kick at the foot by way of greeting among friends may be a practical joke or may even hurt but it is not a serious or real attack on a person's safety<sup>11</sup> as to constitute unlawful aggression. Also, the act of the deceased in holding a knife and in a threatening manner asked the accused what had brought her in her house does not constitute unlawful aggression as it is only a mere threatening or intimidating attitude.<sup>12</sup> Nor can it consist in an imaginary evil as where the accused armed with a loaded rifle fired at the deceased because he was a man of violent temper and he carried a *kris* in his hand and he imagined the deceased might attack him<sup>13</sup> or

could not be held responsible for assault or physical injuries, because he acted in legitimate self-defense.<sup>35</sup>

### Person Attacked by the Accused Must be the Unlawful Aggressor

The unlawful aggression must come directly or indirectly from the person who was subsequently attacked by the accused. (Decision of Supreme Court of Spain of May 6, 1907). When the author of the unlawful aggression is not known, unlawful aggression cannot be considered present (Decision of Supreme Court of Spain of February 27, 1895).<sup>36</sup> It is necessary that the aggression be sudden, immediate and imminent and that the person who defends himself therefrom finds at the very moment he acts in self-defense, that he is threatened by some evil or injury. He must have no time for deliberation and cool thinking.<sup>37</sup>

### Retaliation is not Unlawful Aggression

The harm caused by the person to another who offended or caused him injury, sometime after he suffered such injury does not constitute an act of self-defense but an act of revenge.<sup>38</sup> When an aggression is in retaliation of an insult, injury or threat, it is not a defense but a punishment inflicted on the author of the provocation but such may be considered as a mitigating circumstance.<sup>39</sup>

### Reasonable Necessity of the Means Employed to Prevent or Repel the Unlawful Aggression

#### Test of Rationality of the Means Employed

The established rule is that the reasonable necessity of the means employed in the defense does not depend upon the harm done, but rests upon the imminent danger of such injury. The test<sup>40</sup> of rationality is not what a man should do under normal circumstances and with time for cool reflection present. It is rather how an individual in such dire situation, with the grim prospect of the loss of life, would react. The law wisely takes into consideration the well-nigh irresistible force of instinct of self-preservation.<sup>41</sup>

The reasonableness of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury.<sup>42</sup> So where the accused was attacked with a weapon by the deceased and had already been wounded but the accused was able to take away the weapon from him, since the deceased continued to struggle with the accused for the possession of the weapon until the accused succeeded in wounding the deceased mortally, the accused can claim self-defense as the peril to his life, actual and imminent, continued.<sup>43</sup> But the rule cannot apply when the accused disarmed the deceased and the danger to his life and limb under the circum-

stances, was no longer present, as when the aggressor pleaded he could not fight anymore.<sup>44</sup>

The use of a knife against an aggressor who hit the accused with a cane and continued to beat him,<sup>45</sup> or of a knife against four aggressors who are stronger and bigger than the accused who is cornered and has his back to the iron railing and who are striking him with fist blows<sup>46</sup> or the use of a bolo by the accused who is cornered by a bully known to have a violent disposition, bigger and stronger than the accused<sup>47</sup> have been found to be reasonable means to repel an unlawful aggression.

The requisite of reasonable means to prevent or repel an unlawful aggression is interpreted liberally in favor of law abiding citizens.<sup>48</sup> More so, if the person unlawfully attacked is a police officer, in the performance of his duty, who must stand his ground and cannot like a private individual, take refuge in flight.<sup>49</sup>

### Lack of Sufficient Provocation on the Part of the Person Defending Himself

The third element of self-defense is lack of sufficient provocation on the part of the person defending himself. It usually happens that a person may be attacked by another even though he has not given any provocation. Obviously, in this case, the third element is present as when the provocation was given by the brother-in-law of the accused.<sup>50</sup>

### Meaning of Sufficient Provocation

Our Supreme Court quoting with approval, the view of *Viada*, held that sufficient provocation means that it should be proportionate to the act committed and adequate to stir one to its commission.<sup>51</sup> The act of the accused who did not approach the deceased when called by him but instead remarked "why are you calling me" which answer annoyed the deceased and which made him throw a piece of wood at the deceased, is not sufficient provocation<sup>52</sup> but the kissing of a girl by the accused who was a friend of the deceased constitutes sufficient provocation.<sup>53</sup>

### Third Element Present Even if Provocation is Sufficient

But even if the provocation is sufficient, the third element is present if it is not given by the person defending. The rule is also settled that even if the provocation is sufficient but if it is not immediate to the unlawful aggression, the third element of self-defense may still be present.<sup>54</sup> The reason is because the aggressor due to the interval of time which lapsed from the provocation to the aggression has already regained his reason and self-control.

### Third Element Not Present if Accused is the Aggressor

The third element is not present if the accused is the aggressor because it cannot be said that he is defending himself from the effect of another's aggression.<sup>55</sup> This is the reason why in the second stage of a fight where the person

attacked in the first stage, pursued the original aggressor when he ran away, there can be no provocation because the accused in the second stage is the aggressor as the third element refers to the person defending himself.

### Self-defense of Rights

The justifying circumstance includes not only the defense by one of his person but also of his rights. There are self-defense of property, of chastity or of honor.

### Complete Self-defense of a Woman's Honor

In *People v. Luague*,<sup>56</sup> it was held that an attempt to rape a woman constitutes aggression to put her in a state of legitimate defense inasmuch as a woman's honor cannot but be esteemed to be a right as precious, if not more, than her very existence. *Viada*, calls the right to honor is "not the least prized of man's patrimony",<sup>57</sup> As long as there is an intent to rape, a woman is justified to repel the aggression with the use of a knife, if she has no other means of defending herself.<sup>58</sup> But if there is no intent to rape, which can be judged by the attending circumstances, as when the deceased placed his hand on the upper part of the right thigh of the woman, who was sitting on a bench inside a chapel, which was lighted and where there were about ten people, including her father, the act of the woman in stabbing the aggressor to death, constitutes incomplete self-defense of honor as the means employed is considered excessive, since under the circumstances there is no possibility of her being raped.<sup>59</sup>

### Self-defense of Property

Since defense of property is not of such importance as right to person, the rule is there is self-defense to property when the attack on the property is coupled with an attack on the person of one entrusted with said property.<sup>60</sup> So, if the accused armed with a shotgun while looking over his land, saw a man stole his palay, shouted for him to stop and as he did not stop, fired in the air and finally at him, hitting him mortally and as a consequence he died, the defense of his property is incomplete as there was no attack upon his person. This follows the decision of the Supreme Court of Spain of May 7, 1913. It seems that the basis of the liability is that the means employed to repel the aggression is not reasonable since the possessor was not attacked by the thief. Attacking the possessor of the property is not an element of self-defense of rights but is merely an incident to the second requisite regarding the reasonableness employed to repel the act of unlawful taking of one's property.

However, under Art. 429 of the Civil Code, the owner or lawful possessor of a thing has the right to use reasonable force which is necessary to prevent or repel an actual or threatened invasion or usurpation of his property. So, a tenant who employed force to prevent himself from being deprived of the possession of a parcel of land which he has already cultivated, is not liable for grave coercion.<sup>61</sup> But although the owner has the right to resist the unlawful deprivation of his proper-

ty, the means to be employed must be reasonable. So, although the acts of the victims of fencing the house and the rice mill of the accused constituted unlawful aggression, not on the person of the accused but on his property rights, shooting the victims to death is resistance which is unreasonable and disproportionate to the unlawful aggression of the deceased.<sup>62</sup>

### Self-defense of Domicile

Violent entry to another's house at night time by a person who is armed may be repelled by the owner of the house by shooting him as he need not wait for a blow by the aggressor as such may prove fatal. The manner of the entry constitutes unlawful aggression and justifies resort to weapons in defense of the home and kin.<sup>63</sup> The owner of a house, who was awakened by the intrusion of a thief and upon apprehending him was assaulted by the latter in the cover of darkness is not expected to verify who the thief is, whether he is armed and to wait until he touches him before he should act in his defense. The following remarks in the case of *People v. Salatan*<sup>64</sup> have relevant significance to current events, to wit: "In this day and times when bold robberies and thieveries are committed even under the very noses of the members of the household and usually at night, courts must not hesitate to sustain the theory of self-defense of the victim of thievery or robbery when such thief or robber by overt acts show aggression instead of fear or desire to escape upon apprehension, for certainly such an intruder must be prepared not only to steal but to kill under the circumstances."

### Self-defense in Libel

There is also self-defense in libel. *People v. Chua Hiong*<sup>65</sup> echoes the truism that self-defense is man's inborn right. In a physical assault, retaliation becomes unlawful after the attack has ceased, because there would be no further harm to repel. But this is not the case when it is aimed at a person's good name. Once the aspersion is cast its sting clings and the one defamed may avail himself of all the necessary means to shake it off. He may hit back with another libel which, if adequate, will be justified. But if the answer is unnecessarily libelous, there is no self-defense.<sup>66</sup> Retaliation or vindictiveness cannot be the basis of self-defense.<sup>67</sup>

## 2. Defense of Relative – Elements

In this justifying circumstance, the first two elements are unlawful aggression and reasonable necessity of the means employed to prevent or repel it. The third element is in case provocation was given by the person attacked, the person making the defense had no part in the provocation. The plea of defense of a relative must also be established with clear, satisfactory and convincing proof.<sup>68</sup>

### Relatives Included

The relatives entitled to defense are the spouse, ascendants, descendants, legitimate, natural and adopted brothers or sisters, relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree. The brother-in-law of the wife of the accused is not included in the relationship.<sup>69</sup>

### Basis

The basis of the justification is not only humanitarian sentiment but also the impulse and spontaneity of a person to come to the assistance of one who is closely related to him by blood in the face of actual or imminent danger. So, the act of the accused in attacking with a bolo the deceased whom he surprised holding his wife and trying to lay her on the floor<sup>70</sup> or where the accused who was abruptly awakened saw his wife being pursued by the deceased with a bolo ready to strike, shot the deceased<sup>71</sup> or where the defendant who heard his wife screaming for help saw in the darkness his wife and child in a huddle to escape bolo thrusts from the assailant, stabbed the latter in the forearm,<sup>72</sup> defense of relative was present.

### Unlawful Aggression Must Be Present

Defense of relative requires presence of unlawful aggression. When two persons are getting ready to strike each other, there can be no unlawful aggression, and hence a relative of either who butts in and administers a deadly blow on the other to prevent him from doing harm is not acting in defense of relative.<sup>73</sup> However, unlawful aggression may still be present even if the relative defended, appellant's father, had wrested the weapon from the victim, if the relative defended had suffered four gunshot wounds and would be an easy prey for another aggression, when the accused, the relative defending, stabbed the aggressor. The deceased, who was the aggressor, may have been defenseless but only for a short period of time. Besides, the accused in defending his father was not expected to have sufficient tranquility of mind to think to calculate and to choose which course of action to take.<sup>74</sup>

If the relative defending is the aggressor, there can be no defense of relative.<sup>75</sup> If the relative defended is also the aggressor, defense of relative cannot be invoked. However, if the person in defending his relative killed the aggressor in the honest belief that his relative was in imminent danger due to an unlawful aggression, defense of a relative may be invoked.<sup>76</sup>

### 3. Defense of Stranger Elements

The first two elements of this justifying circumstance are unlawful aggression and reasonable necessity of the means employed to prevent or repel it. The third element is that the person defending the stranger is not induced by revenge, resentment or any evil motive. A person who is not a relative as provided in defense of relative is deemed a stranger.

### Basis

The basis of this justifying circumstance is a feeling which is humanitarian which prompted a person by impulse to come to the rescue of a stranger who is in actual or imminent peril of his person or rights. When the companion of the accused was attacked with a bolo by the deceased and the accused shot the aggressor who was still armed for another blow, the Supreme Court in acquit-

ting him said: "Certain it is that the ordinary man would not stand idly by and see a companion killed without attempting to save his life."<sup>77</sup> In the same case, it was held that what one may do in his defense, another may do for him.<sup>77a</sup>

The accused invoking his defense must show by clear and convincing evidence the exculpatory facts relied by him constituting the elements thereof as prescribed in the Code. So when the deceased, a Japanese, attacked an old man, 78 years old, husband of a woman, whom the Japanese bothered with indecent proposals, hit him on the face, shoved him on the ground, and attempted to choke him, the accused, who furnished the old man with a small gaff used by game cocks with which the old man killed his assailant, was held to have acted in defense of a stranger.<sup>78</sup> Also, where the accused, a barber, while cutting the hair of a customer on the ground floor of his house, heard the screams for help of his wife and the wife of the assailant, went thereto, and seeing the assailant attacking his own wife with a dagger, struggled for the possession of the dagger and in the course of which inflicted wounds upon the assailant which caused his death,<sup>79</sup> it was held that the accused acted under the circumstances in defense of stranger, considering the suddenness of the disturbance and the startling and disturbing effect upon the mind of the accused which must have resulted from hearing the screams of his wife calling for help.<sup>80</sup>

#### 4. State of Necessity

##### Nature and Effect

This situation exists if damage is done to another to avoid an evil or injury. The actor does not incur any criminal nor civil liability. However, under Article 101 par. 2 of the Revised Penal Code the persons for whose benefits the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The following requisites must be present.<sup>81</sup>

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

The evil sought to be avoided must not be due to the negligence or imprudence of the actor nor must it be the result of any infraction or violation of a law. The phrase "damage to another" includes injury to persons and damage to property.

Common examples are the demolition of some houses during a conflagration to prevent the fire from spreading to a congested section of the neighborhood composed of numerous houses of mixed materials or the jettison by the captain of the cargo to save the vessel from sinking during a storm.

##### Illustrative Cases

In *People v. Panganiban*,<sup>82</sup> the accused who was driving a passenger bus bumped into the left rear portion of another parked passenger bus in order to avoid a collision with a Volkswagen car crossing from the opposite direction,



which would have caused untold injuries and even death to several persons, and as he had no practical and less harmful means of preventing the same except by bumping into the parked passenger bus, the Court of Appeals held that the driver was not criminally liable as he acted under a state of necessity since the evil sought to be avoided was a head-on collision with the Volkswagen car, which was actual and the injury feared which was the possible loss and death of human lives was greater than the damage suffered by the parked passenger bus. However, the driver was sentenced to indemnify the owner of the passenger bus for the damage caused on the ground that under a state of necessity the civil liability is borne by the person or persons benefited and the accused stood to benefit by what he had done because he was responsible for the lives of his passengers and he would have been answerable criminally and civilly had any of them been injured or killed. I believe this is wrong. The impact of a justifying circumstance is the absence of any criminal and civil liability on the part of the actor because the act that he has committed is lawful. A third person who benefitted from the act of the actor who acted in a State of Necessity is the one civilly liable as is clearly provided in Article 101 par. 2 of the Code which refers to "the persons for whose benefit the harm has been prevented x x x."

In *Tan v. Standard Vacuum Oil Co.*,<sup>83</sup> while a truck of Standard Vacuum Oil Co. was discharging gasoline at the underground tank of a gas station, it caught fire, and in order to prevent the burning of the gasoline station, the driver drove the tank trailer to the middle of the street and there abandoned, but the tank continued to move and crashed against and burned a house across the street. The driver acted to avoid greater evil or harm, which would have been the case had he not brought the tank truck trailer to the middle of the street for the fire would have caused the explosion of the gasoline deposit in the gas station which would have resulted in a conflagration of much greater proportion and consequences to the houses nearby and surrounding it. The owner of the gas station was held civilly liable to the plaintiff who was the owner of the house damaged as the case is within the purview of Article 101, par. 2 of the Revised Penal Code.

State of necessity to avoid an injury to a person is illustrated in *People v. Hernandez*.<sup>84</sup> In this case, the accused who was in love with the offended party, was persuaded by her parents and an uncle to accept his proposal of marriage. When the date of marriage approached as she felt a sense of remorse since she was not honestly in love with the offended party, she left her house and eloped with the man with whom she was in love. Convicted by the trial court of serious slander by deed, she was acquitted by the Court of Appeals on the ground that if a party to an agreement to marry backs out should be held criminally liable, that would be a way of compelling a party to go into marriage without his or her consent, and this would contravene the principle of law that what could not be done directly could not be done indirectly and the accused had the right to avoid to herself the evil of going thru a loveless marriage pursuant to Art. 11 par. 4 of the Revised Penal Code.

## 5. Fulfillment of Duty or Lawful Exercise of a Right

### Nature and Requisites

This justifying circumstance, being an affirmative defense, must be proved convincingly and satisfactorily.<sup>85</sup> It is analogous to the Civil law doctrine of self-help under Art. 429 of the Civil Code,<sup>86</sup> which gives a person the right to exclude another from the enjoyment and disposal of his property, authorizing him to use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation thereof.

There are two requisites: 1) that the offender acted in the performance of a duty or in the lawful exercise of a right; 2) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.<sup>87</sup>

In the *Oanis* case,<sup>88</sup> the accused, who were peace officers, were ordered to arrest a notorious convict, dead or alive, if resistance was offered by him and they were overpowered. They shot the deceased, an innocent person, while asleep in the belief that he was the wanted convict. It was held that only the first requisite was present, i.e., that the accused acted in the performance of their duty. But due to impatience or over-anxiety or in their desire to take no chances, they had exceeded in the fulfillment of such duty by killing the person whom they believed to be the notorious convict without making any previous inquiry as to his identity.

#### Rule Regarding the Shooting of an Escaping Prisoner

Where a prisoner escaped from jail and was found by a policeman armed with a pointed piece of bamboo in the shape of a lance, and who, when asked by the policeman to surrender, answered him with a stroke of the lance, and so the policeman fired at the prisoner who ran away as he was not hit and then pursued him, firing and killing him, it was held that the policeman was not criminally liable as the killing was done in the performance of duty. The deceased was under the obligation to surrender and had no right, after evading service of his sentence to assault and disobey the policeman with weapon in hand.<sup>89</sup> This ruling was followed in the recent case of *Valcorza v. People*<sup>90</sup> where a detention prisoner escaped from his cell, ran away when ordered to stop by the police, threw himself into a creek to elude his pursuers and then he suddenly emerged from the bushes, near the accused and a fellow policeman, assaulted the accused policeman twice with a stone and then ran away again. The accused pursued him and believing that the deceased would be able to elude him and his companion, fired five cautionary shots in the air and then aimed directly at the escaping prisoner who was hit and killed. It was held the accused policeman acted in the performance of official duty and more or less the act was necessary to prevent the escaping prisoner from eluding the officers of the law. The Court of Appeals even held in a case<sup>91</sup> that if an escaping prisoner refused to stop when commanded by a peace officer, the latter may resort to the extreme of shooting at his legs to disable him without intending to kill him; but if unfortunately he hits the back and kills him, he acts in the lawful performance of a duty. I believe this ruling must be qualified. In a significant decision, also of the Court of Appeals<sup>92</sup> it was held that although it was the duty of the appellant, a peace officer, to prevent the escape of the prisoner placed under his custody and in compliance therewith, he had the right to prev-

ent his escape, as long as the means employed are not completely capricious, arbitrary and unreasonable. As early as 1901<sup>93</sup> the Supreme Court already established the guideline that firing at a prisoner who persisted in his attempt to escape is justified if there is no other remedy to prevent him from getting away. This rule was emphasized in *People v. Lagata*<sup>94</sup> when the Supreme Court held that while custodians of prisoners should take care to avoid the latter's escape, only absolute necessity would authorize them to fire against the prisoners. A public officer must act in the lawful exercise of the position he holds<sup>95</sup> although in his favor is the presumption that his official duty has been regularly performed.<sup>96</sup>

## 6. Obedience to a Lawful Order Issued by a Superior

### Nature and Requisites

For this justifying circumstance to be present both the person who gives the order and the person who executes it must be acting within the limitations prescribed by law.<sup>97</sup> If the order of the superior is unlawful, obedience thereto is not legally due. The subordinate is not bound to obey it.<sup>98</sup> If the subordinate complies with such illegal order, as when a 1st Sergeant ordered his subordinate, a mere Sergeant, to shoot at the deceased, although considering the rigid military discipline which makes a soldier of inferior rank practically an automaton and the subordinate could not be expected to discuss the legality of the order of his superior, since the order is unlawful, the subordinate is not justified in complying with it although he is entitled to a mitigating circumstance under Article 13, par. 1.<sup>99</sup> If the subordinate had the means with which to protect himself from any retaliation on the part of his superior, if he should threaten to punish him if he disobeyed his order to kill a person and also the opportunity to escape with the intended victim to avoid the ire of his superior, yet, did not do so, but instead carried out the order, it cannot be said he acted on the matter involuntarily or under the influence of uncontrollable fear.<sup>100</sup>

But even if the order of a superior is unlawful, if the compliance of the subordinate is due to a compulsion of an irresistible force or under an impulse of uncontrollable fear of an equal or greater injury, there is exemption from criminal liability.<sup>101</sup> So, where a subordinate took part in the arrest of the deceased as ordered by his superior officer who were later executed, even if the subordinate knew that the deceased were to be liquidated, not for being pro-Japanese but for their refusal to comply with the immoral wish of his officer, he would not be in a position to disobey the order of his superior because had he refused, his superior might have ordered his liquidation for disobedience to an order of a superior officer.<sup>102</sup>

However, even if the order of the superior is illegal, if it is not clearly illegal and the subordinate is not aware of its illegality, and he obeys it in good faith, there will be no criminal liability. Criminal intent will be absent. A crime is not committed if the mind of the person performing the act complained of be innocent.<sup>103</sup>

## EXEMPTING CIRCUMSTANCES

In an exempting circumstance, there is absent in the person of the offender any of the elements of voluntariness. Hence, although a crime is committed, there is no criminal liability, but there is civil liability, except in the exempting circumstances of accident and insuperable cause because none is provided in the Code.

The exempting circumstances are imbecility or insanity, minority, accident, compulsion of irresistible force, impulse of uncontrollable fear of an equal or greater injury, lawful or insuperable cause. Absolutory causes and instigation of a peace officer produce also the effect of an exempting circumstance.

### 1. Insanity and Imbecility

Insanity as a defense must be proved by clear and positive evidence, because the law presumes that every person is of sound mind.<sup>104</sup> There is insanity when there is complete deprivation of intelligence in committing the act, that is, the accused is deprived of reason; he acts without the least discernment because there is a total deprivation of freedom of will.<sup>105</sup> To be exempted from criminal liability the offender must be "so insane as to be incapable of entertaining a criminal intent." (22 CJS 119, 14 Am. Jr. p. 388.)<sup>106</sup>

Evidence of insanity must refer to the time preceding the act or at the moment of its execution.<sup>107</sup> So, if the evidence consisted of the performance of insane acts subsequent to the commission of the crime, the presumption of sanity governs. To submit the accused to a psychiatric test to determine his sanity three years after the commission of the crime is not possible to ascertain his mental condition when he committed the crime with which he is charged.

In *People v. Formigones*<sup>108</sup> our Supreme Court established the doctrine that an imbecile to be exempt must be deprived completely of reason or discernment and freedom of will at the time of the commission of the crime. Imbecility or insanity at the time of the commission of the act should absolutely deprive the offender of intelligence or freedom of will because a mere abnormality of the mental faculties does not exclude imputability.<sup>109</sup> Eccentricity, mental weakness or mere depression resulting from physical ailments is not insanity in law.<sup>110</sup>

The rule in the United States is different. First, is the right-wrong test, whereby the offender must be laboring under a disease of the mind that he did not know what he was doing or if he did know he did not know it was wrong.<sup>111</sup>

The test was subsequently overruled by the irresistible impulse test. The basis of absence of criminal liability, is due to a mental disease, as a result of which the offender was powerless to resist what he was doing even though he knew what he was doing and he knew it was wrong.<sup>111a</sup>

The irresistible impulse test and right-wrong test have been abandoned by another test holding that the unlawful act committed by the alleged insane must be the product of a mental disease or mental defect. A mental disease is a condition capable of improvement or deterioration; a mental defect is a condition not capable of improvement or deterioration, and either is congenital or the result of an injury or of a physical or mental disease.<sup>111b</sup>

The latest test is enunciated in *United States v. Currens*<sup>111c</sup> that the unlawful act is a result of a mental disease or defect and the offender lacks substantial capacity to conform his conduct to the requirements of the law which he has violated. The disease or defect has so impaired his reason that either he did not know that the act was wrong or he did not have the ability to refrain from doing it. This rule, in substance, approximates the test of deprivation of intelligence or absence of freedom of will which is followed in Philippine jurisdiction.

In determining whether the proceeding is to be suspended because of insanity as claimed by the accused, the Court must bear in mind that not every aberration of the mind or exhibition of mental deficiency is sufficient to justify such suspension. The test is to be found in the question whether the accused would have a fair trial, with the assistance which the law secures or gives.<sup>112</sup>

Where the wife who was suffering from malignant malaria attacked her husband with scissors, wounding him in the abdomen, from which he died later, it was held she was not criminally liable as she executed the acts in a moment when she was suffering insanity resulting from malignant malaria, an illness which affects the nervous system and causes among others such complication as acute melancholia and insanity at times.<sup>113</sup> Also, attack on a person by one while in a state of somnambulism may lead to exemption from criminal liability as such is embraced in a plea of insanity.<sup>114</sup> Epilepsy, a nervous illness characterized by fits, occurring at intervals attended by convulsive motions of the muscles and loss of consciousness may be embraced in insanity. The offender claiming epileptic fit must prove it occurred before, during and after the commission of the crime.<sup>115</sup>

## 2. Minority

A youthful offender nine years or below is conclusively presumed exempt from criminal liability. A youthful offender over nine years old but below fifteen years is also not criminally liable unless he has acted with discernment. The latter establishes a disputable presumption.<sup>116</sup> The age of the minor is reckoned at the time of the commission of the crime.<sup>117</sup> A minor exempt from criminal liability shall be committed to the care of his father or mother or nearest relative or family friend in the discretion of the court and subject to its supervision.<sup>117a</sup>

Discernment is more than the mere understanding between right and wrong. It means the mental capacity of a minor between 9 to 15 years to fully appreciate the consequences of his unlawful act.<sup>118</sup> Discernment is determined by all the circumstances, the appearance of the minor, his attitude and his behavior and conduct, not only before and during the commission of the act but also after and even during the trial.<sup>119</sup> Thus, the manner in which the accused, a minor 13 years, 11 months and 3 days old, when apprehended, frankly and unhesitatingly answered her investigators would tend to show that she was unaware that the price of one tin of cocoa, which she quoted at ₱1.20 was above the regulation price of the same. Young as she was and being a 6th grade pupil, it was held it could not be believed that she understood what the word "ceiling" really means.<sup>120</sup> On the other hand, when the minor 11 years of age shot at the offended party with his slingshot striking just the ball of one of his eyes after which the accused remarked "*putang ina mo, mabuti matikman mo*" it was held that the

minor acted with discernment fully realizing the nature and illegality of his wrongful act as the first part of the remark manifests his perverted character and the second part reflects his satisfaction and elation upon the accomplishment of his criminal act.<sup>121</sup>

### 3. Accident.

An accident is any event or occurrence which is not foreseeable.<sup>122</sup>

In the case of accident as an exempting circumstance, a lawful act is committed with due care and any injury caused is without fault or intention in causing it. There is therefore no criminal intent nor negligence or imprudence.

If the offender who is defending himself from an unjustified attack without aiming at his assailant, indiscriminately, fired his revolver at the risk of the lives and limbs of innocent persons whom he knew were in the place of the occurrence, his act was not exercised with due care. Accident cannot properly be invoked by the offender.<sup>123</sup> When the accused, shot and injured a person and the same bullet accidentally killed a bystander, he was held to be also criminally liable for the death of the bystander as the act of shooting, which was the proximate cause of the fatal accident, was unlawful.<sup>124</sup> A mishap caused by faulty brakes is not an accident<sup>125</sup> but the explosion of a front tire of a truck after passing a curve as a result of which it took a sharp turn to the right and fell on the embankment, notwithstanding efforts exerted by the driver to apply the brakes and to veer the steering wheel to the left, as a consequence, of which one of the passengers of the truck was pinned to death, there being no excessive speed, the blow out of the tire was held to be due to an accident and cannot give rise to any criminal liability<sup>126</sup>

### 4. Compulsion of an Irresistible Force

The basis of this exempting circumstance is absence of freedom of action.

The force is physical and must come from a stranger. As said by the Supreme Court in *People v. Fernando*,<sup>127</sup> such a force can never consist of anything which springs primarily from the man himself; it must be a force which acts upon him from the outside by means of a third person. The force to be irresistible must produce an effect upon the offender that, in spite of all resistance it reduces him to a mere instrument and as such, it compels his members to act and his mind to obey.<sup>128</sup>

Where a person was forced by the murderers to bury and conceal the corpses of the victims whom they murdered and the accused buried them by force under a butt of a gun, he performed the act by reason of irresistible force and hence he was exempt from criminal liability.<sup>129</sup>

### 5. Impulse of Uncontrollable Fear of an Equal or Greater Injury

The Supreme Court in the early case of *U.S. v. Elicanal*<sup>130</sup> expressed with clarity when this exempting circumstance may be considered present, to wit:

"In order that one may allege with success that he acted under the impulse of an uncontrollable fear related to a crime of such gravity and so imminent that it

might safely be said that the ordinary run of men would have been governed by it. And the evil threatened must be greater than, or at least equal, to that which he is compelled to cause. The Legislature by this enactment did not intend to say that any fear would exempt one from performing his legal duty. It was intended simply to exempt from criminal responsibility when the threat that which the one threatened was asked to produce."

This exempting circumstance has two elements: 1) the threat which caused the fear was of an evil greater than, or at least equal to, that which he was required to commit; 2) it promised an evil of such gravity and imminence that the ordinary man would have succumbed to it.<sup>131</sup>

Fear or duress in order to be valid defense, should be based on real, imminent or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, flimsy or remote fear.<sup>132</sup> A mere threat of a future injury is not enough. So, where the accused alleged that he cooperated in the commission of the crime of robbery-slashing in obedience to his co-accused who was then holding a gun, it was held that this exempting circumstance was not present because there was no showing that the gun was pointed at him to secure his cooperation in the commission of the crime and the fear harbored by him was merely imaginary, which is not the uncontrollable fear contemplated by law. But if the accused were captured by brigands who compelled them under threats of death to take and subscribe the oath to support the Katipunan, they cannot be liable for joining that organization to overthrow the Government by force of arms as they acted under duress or under the impulse of an uncontrollable fear of an equal or greater injury.<sup>133</sup>

This exempting circumstance cannot be invoked by the accused who was ordered by his superior to kill a person but had not only the means with which to protect himself from any retaliation on the part of his superior if they should threaten to punish him if he disobeyed their order, but also the opportunity to escape with the intended victim to avoid the ire of said superior, yet did not do so, but instead carried out the order.<sup>134</sup>

#### 6. Lawful or Insuperable Cause

The essence of this exempting circumstance is that the act which the offender fails to perform is required by law and his failure must be due either to a lawful or insuperable cause.<sup>135</sup> This exempting circumstance generally applies to felonies by omission. The basis of the exemption is absence of criminal intent.

If a peace officer who legally arrested a person failed to deliver him to the proper judicial authority within the period prescribed in Article 125 of the Revised Penal Code as amended because to reach the court required a journey for three days by boat as there was no other available means of transportation, the failure to comply with what the law requires is due to an insuperable cause.<sup>136</sup> Also, a mother who gave birth to a child in a thicket whom she later abandoned since at the time of the childbirth she was overcome by severe dizziness and extreme debility that it was physically impossible for her to take the child home even if she was aware that she had just delivered, is not liable for infanticide as her debility or dizziness is considered the lawful or insuperable cause prescribed for by law.<sup>137</sup>

## Other Defenses:

### 7. Absolutory Causes

In an absolutory cause, a felony is committed but the Code does not make the offender criminally liable as no penalty is imposed upon him. Some of the significant absolutory causes follow:

No penalties are imposed upon the accessories with respect to their spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters or relatives by affinity within the same degrees except if they profit from the effects of the crime.<sup>138</sup> Where physical injuries which are not serious are inflicted by the spouse or parents who surprised the spouse or a daughter under eighteen years of age in the act of committing sexual intercourse with another, criminal liability is not incurred.<sup>139</sup> In the crime of theft, estafa and malicious mischief the offender related to the offended is not criminally liable.<sup>140</sup>

### 8. Instigation and Entrapment

In *People v. Galicia*<sup>141</sup> the Court of Appeals established the distinction between instigation and entrapment as follows:

“x x x the instigator practically induces the will-be accused into the commission of the offense and himself becomes a co-principal; in entrapment ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan. Entrapment is no bar to the prosecution and conviction of the offender.”

Entrapment is neither an exempting or mitigating circumstance.<sup>142</sup> Entrapment is not prohibited as contrary to public policy. It is instigation which has been deemed contrary to public policy and illegal.<sup>143</sup>

### 9. Conclusion

Justifying and exempting circumstances partake of the nature of affirmative defenses. The burden of persuasion of affirmative defenses is upon the accused. In the consideration as to whether the evidence presented is satisfactory, the court should not overlook two rights of the accused which are enshrined in the Constitution, that is, the presumption of innocence and that his guilt be proved beyond reasonable doubt. The state must show that the accused has not violated the spirit of the statute but he has also offended against the letter of the law.<sup>144</sup> All considerations may be guided by this eloquent passage in the case of *People v. Cunana*.<sup>145</sup> This calls to our mind what Alfonso El Sabio was reputed to have said a long time ago. “*Mas vale quedan sin castiger diez reos presuntos que se castigue uno inocente.*” This is in effect what Hale also proclaimed many years ago that it is better to acquit five guilty men than to convict one who is innocent.<sup>146</sup>

This dictum is echoed in the 1985 case of *People v. Alcaraz et al*, L-66509, April 25, 1985, 136 SCRA 74, which espoused that “our jurisprudence is built on the concept that it is preferable for the guilty to remain unpunished than for an innocent person to go to prison unjustly.”



## FOOTNOTES

- <sup>1</sup> REV. PEN. CODE, Art. 11 (4).
- <sup>2</sup> REV. PEN. CODE, Art. 11, pars. 1-6.
- <sup>3</sup> G.R. No. 23249, November 25, 1974, 61 SCRA 180 (1974); also Castañares v. Court of Appeals, G.R. Nos. 41269-70, August 6, 1979, 92 SCRA 567 (1979).
- <sup>4</sup> PESINA, par. 73; CARRARA, par. 291; FERIA AND GREGORIO, Comments On the Revised Penal Code, Vol. 1.
- <sup>5</sup> People v. Mendoza, G. R. No. 16392, 13 SCRA 11 (1965); People v. Aquino G. R. No. 32390, December 28, 1973, 54 SCRA 409 (1973).
- <sup>6</sup> Art. 11, par. 1; People v. Bautista, 116 Phil. 830 (1962); People v. Desana G. R. No. 26191, May 19, 1975, 64 SCRA 84 (1975); People v. Balansag 60 Phil. 266 (1934).
- <sup>7</sup> People v. Ansoyon, 75 Phil. 772 (1946); People v. Padiernos, G. R. No. 37284, February 27, 1976, 69 SCRA 484 (1976); People v. Talaboc Jr. G. R. No. 25004, October 31, 1969, 30 SCRA 87 (1969).
- <sup>8</sup> U.S. v. Banzuela 31 Phil. 365 (1974); U.S. v. Santos, 17 Phil. 87 (1940); People v. Macaso, G. R. No. 30489, June 30, 1975, 64 SCRA 659 (1975); Castañares v. Court of Appeals, *supra*.
- <sup>9</sup> Vol. 1, 5th ed. 173 page 3275 cited in People v. Lacson, CA- G. R. No. 02098-CR, July 20, 1966, 10 CA Rep. 2d 78 (1966).
- <sup>10</sup> U.S. v. Carraro, 8 Phil. 544 (1936).
- <sup>11</sup> People v. Sabio, G.R. No. 23734, April 27, 1967, 19 SCRA 901 (1967); People v. Yuman, 61 Phil. 786 (1935).
- <sup>12</sup> U.S. v. Guy-Sayco, 13 Phil. 293 (1909).
- <sup>13</sup> People v. de la Cruz, 61 Phil. 422 (1935)
- <sup>14</sup> People v. Dimayuga, C.A.-G.R. Nos. 01223 CA & 01540-CR, January 16, 1963 3 C.A. Rep. 2d 168 (1963)
- <sup>15</sup> People v. Zambarrano, C.A.-G.R. No. 19023-R, July 16, 1958, 54 O.G. 8455.
- <sup>16</sup> People v. Boral, C.A.-G.R. No. 03038-CR, June 2, 1967 11 C.A. Rep. 2d 914 (1967).
- <sup>17</sup> People v. Macaso, *supra*.
- <sup>18</sup> Decision, Supreme Court of Spain, March 8, 1887;
- <sup>19</sup> People v. Javier C.A.-G.R. No. 07285-CR, January 3, 1968, 65 O.G. 2605 March 1969). 13 1355 (1969).
- <sup>19</sup> People v. Sabio, *supra*.
- <sup>20</sup> People v. dela Cruz, G. R. No. 45485, September 19, 1978, 85 SCRA 285 (1978).
- <sup>21</sup> People v. Diaz, G.R. No 24002, January 21, 1974, 55 SCRA 178 (1974).
- <sup>22</sup> People v. Ardisa, G.R. No. 29351, January 23, 1974, 55 SCRA 245 (1974).
- <sup>23</sup> People v. Mendoza, G.R. No. 16392, January 30, 1965, 13 SCRA 11 (1965).
- <sup>24</sup> U.S. v. Navarro, 7 Phil. 713 (1907); People v. Macaspac, 60 Phil. 683 (1934).
- <sup>25</sup> People v. Bauden, 77 Phil. 105 (1946); citing U.S. v. Cortes, 36 Phi. 837 (1917); People v. Gundayao, G.R. No. 26240, October 31, 1969, 30 SCRA 226 (1969).
- <sup>26</sup> People v. Kruse, C.A. G.R. Nos. 01652-53-CR, September 14, 1967, 64 O.G. 12630 (Dec., 1968); 12 CA Rep. 2d 399 (1967).
- <sup>27</sup> Justo v. Court of Appeals, 99 Phil. 453 (1976).
- <sup>28</sup> People v. Alconga, 78 Phil. 366 (1947).
- <sup>29</sup> U.S. v. Vitup, 17 Phil. 1 (1910).
- <sup>30</sup> People v. Romero, 34-O.G. 2048 (1933).
- <sup>31</sup> People v. Macariola, L-40757, January 24, 1983, 120 SCRA 92.
- <sup>32</sup> U.S. v. Domen, 37 Phil. 57 (1934)
- <sup>33</sup> G.R. Nos. 41269-70, August 6, 1979, 76 O.G. 751 (Feb. 1980), 92 SCRA 567 (1979).

- <sup>34</sup> U.S. v. Mojica 42 Phil. 784, 789-(1922); People v. Papolota CA-GR No. 03948-CR, June 16, 1968, 13 CA Rep. 2d 731 (1968) People v. Ramilo, CA-G.R. No. 15506-CR, June 10, 1975.
- <sup>35</sup> People v. Tilo, 36 O.G. 54; People v. Dumo, 40 O.G. 5th Suppl. 58 (Aug. 1941).
- <sup>36</sup> People v. Gutierrez, 53 Phil. 609, 611 (1929).
- <sup>37</sup> People v. Arellano, C.A.-G.R. No. 19616-R, May 16, 1958, 54 O.G. 7252 (Nov. 1958).
- <sup>38</sup> U.S. v. Banzuela, 31 Phil. 564, 580 (1915).
- <sup>39</sup> U.S. v. Carrero, 9 Phil. 544 (1908); People v. Perez G.R. No. 28583, April 24, 1974, 56 SCRA 603, 608-609 (1974); U.S. v. Firmo 37 Phil. 133, 135 (1917).
- <sup>40</sup> U.S. v. Paras, 9 Phil. 367 (1907); People v. Boholst-Caballero, *supra*;
- <sup>41</sup> People v. Artuz, G.R. No. 23386, May 26, 1976, 71 SCRA 116 (1976) citing U.S. v. Patala, 2 Phil. 752 (1901); People v. Aquino, G.R. No. 32390, December 28, 1973, 54 SCRA 409 (1973).
- <sup>42</sup> People v. Encomienda, G.R. No. 26750, August 18, 1972, 46 SCRA 522 (1972), citing People v. Lara, 48 Phil. 153 (1925) and People v. Paras, *supra*; People v. Pineda C.A. G.R. No. 104, March 8, 1947, 43 O.G. 3119 (Aug. 1947).
- <sup>43</sup> People v. Artuz, *supra*, People v. Rabandaban, 85 Phil. 636 (1950); People v. Datinguinco, C.A. G.R. No. 2048-R, February 25, 1949, 47 O.G. 765 (February 1951).
- <sup>44</sup> People v. Alviar, 56 Phil. 98 (1931); People v. Calos C.A. G.R. No. 03960-CR, March 30, 1964, 5 CA Rep. 2d 463 (1964).
- <sup>45</sup> U.S. v. Alviar 22 Phil. 252 (1912).
- <sup>46</sup> People v. Ignacio, 58 Phil. 858 (1933); People v. Padua, 40 O.G. 998 (August 1941).
- <sup>47</sup> People v. Sumicad, 56 Phil. 643 (1932).
- <sup>48</sup> U.S. v. Mojica, *supra*.
- <sup>49</sup> U.S. v. Mojica, *supra*.
- <sup>50</sup> People v. Balansag 60 Phil. 266 (1934)
- <sup>51</sup> Viada II, 15th ed.; p. 51 cited in People v. Alconga, *supra*.
- <sup>52</sup> People v. Dolfo, *supra*.
- <sup>53</sup> U.S. v. Laurel 22 Phil. 252 (1912).
- <sup>54</sup> Decisions of the Supreme Court of Spain, March 5, 1902 and April 30, 1906; Castañares v. Court of Appeals, *supra*, note 5.
- <sup>55</sup> People v. Espino, C.A. G.R. No. 386-R CL-931, May 14, 1947, 43 O.G. 4705 (Nov. 1947).
- <sup>56</sup> 62 Phil. 504 (1935).
- <sup>57</sup> Viada 172 (1890), cited in People v. Llague, *supra* and People v. Jaurigue 76 Phil. 174 (1946).
- <sup>58</sup> People v. dela Cruz 61 Phil. 344 (1935).
- <sup>59</sup> People v. Jaurigue, *supra*.
- <sup>60</sup> People v. Anolinar, 38 O.G. 2870 (Oct. 1940); People v. Goya CA-G.R. No. 16373-R, September 29, 1956; U.S. v. Bumanglag, 14 Phil. 644 (1909).
- <sup>61</sup> People v. Cruz 40 O.G. 1690 (August 1941).
- <sup>62</sup> People v. Narvaez, L-33466-67, April 29, 1983, 121 SCRA 389.
- <sup>63</sup> People v. Mirabiles, C. A. G. R. Nos. 510-511-R, July 21, 1947, 45 O.G. 5th Supp. 277 (May, 1949).
- <sup>64</sup> C.A.-G.R. No. 07968-CR, December 27, 1972, 69 O.G. 10134 (Oct. 1973).
- <sup>65</sup> C.A.-G.R. No. 10413-R, October 20, 1954, 51 O.G. 1932, (April 1955); People v. Lauren C.A. G.R. No. 17728-CR July 19, 1976.
- <sup>66</sup> People v. Royo, CA-GR Nos. 17444-R-17446-R, Aug. 24, 1957, 53 O.G. 8618 (Dec. 1957).
- <sup>67</sup> People v. Dianalan, CA-GR No. 06043-R, January 15, 1968, 65 O.G. 3965 (April 1969).

- <sup>68</sup> *People v. Salhuddin*, 51 Phil. 840 (1978); *People v. Yncierto*, CA G.R. No. 1075-R, October 9, 1947, 44 O.G. 2774 (Aug. 1948).
- <sup>69</sup> *People v. Cabellon*, 51 Phil. 846 (1928).
- <sup>70</sup> *U.S. v. Padilla*, 34 Phil. 641 (1916); *People v. Ammalum*, C.A.-G.R. No. 12308-R, July 8, 1955, 51 O.G. 6250 (Dec. 1955).
- <sup>71</sup> *U.S. v. Batungbacal* 37 Phil. 382 (1918).
- <sup>72</sup> *People v. Mangantilao*, 53 Phil. 217 (1929).
- <sup>73</sup> *People v. Moro Munabe*, C.A. G.R. No. 2270-R, Nov. 17, 1948, 46 O.G. 4392 (Sept. 1950).
- <sup>74</sup> *People v. Gonzalvo*, O.G. 5950 (July 1979) citing *People v. De Tros*, C.A. G.R. No. 26292-93-CR, September 25, 1966.
- <sup>75</sup> *People v. Panuril*, C.A.-G.R. Nos. 7790-91, June 21, 1941 40 O.G. 1477 (Aug. 1941).
- <sup>76</sup> *U.S. Esmedia* 17 Phil. 260 (1910).
- <sup>77</sup> *U.S. v. Avjado*, 38 Phil. 10 (1918).
- <sup>77a</sup> 135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890).
- <sup>78</sup> *People v. Berio*, 59 Phil. 533 (1934) cited in *People v. Lasa*, C.A.-G.R. No. 56-R, 43 O.G. 3152 (Aug. 1947) 8 A.C. Rep. 385 (1947); *People v. Evaristo*, G.R. No. 14920, February 26, 1965, 13 SCRA 172 (1965).
- <sup>79</sup> *U.S. v. Subingsubing*, 31 Phil. 376 (1915).
- <sup>80</sup> *People v. Valdez*, 58 Phil. 31 (1931).
- <sup>81</sup> REV. PENAL CODE, Art. 11, par. 4
- <sup>82</sup> C.A.-G.R. No. 15711-CR, June 27, 1977, 75 O.G. 708 (Jan. 1979).
- <sup>83</sup> 91 Phil. 672 (1952).
- <sup>84</sup> C.A.-G.R. No. 2255-3, April 14, 1959, 55 O.G. 8465 (Oct. 1959).
- <sup>85</sup> *People v. Tan*, G.R. No. 22697, October 5, 1976, 73 SCRA 288 (1976.).
- <sup>86</sup> *People v. Depante*, C.A.-G.R. No. 00223-CR, May 5, 1961, 58 O.G. 926 (Jan. 1962); 1 CA Rep 2d 224 (1961).
- <sup>87</sup> *People v. Oanis*, 74 Phil. 257 (1973), *People v. Pajenado*, G.R. No. 26458, January 30, 1976, 69 SCRA 172 (1976).
- <sup>88</sup> *People v. Oanis*, *supra*.
- <sup>89</sup> *People v. Delima*, 46 Phil. 738 (1922).
- <sup>90</sup> G. R. No. 28129, October 31, 1969, 30 SCRA 143 (1969).
- <sup>91</sup> *People v. de la Cruz*, C.A. G.R. No. 10552-CR, 69 O.G. 2699 (Mar. 1973), 17 C.A. Rep. 2d 134 (1972).
- <sup>92</sup> *People v. Bisa*, CA G.R. No. 12463-R, Feb. 17, 1955, 51 O.G. 4091 (August 1955).
- <sup>93</sup> *U.S. v. Magno*, 8 Phil. 314 (1907).
- <sup>94</sup> 83 Phil. 150 (1949).
- <sup>95</sup> *People v. Sabandal*, G.R. No. 31129, September 30, 1971, 41 SCRA 179 (1971).
- <sup>96</sup> RULES OF COURT, Rule 131, Sec. 5 (19); *People v. Francisco* 57 Phil. 418 (1932).
- <sup>97</sup> *People v. Wilson*, 52 Phil. 919 (1920).
- <sup>98</sup> *People v. Barroga*, 54 Phil. 247 (1930); *People v. Margen*, 85 Phil. 839 (1950).
- <sup>99</sup> *People v. Barroga*, *supra*; *People v. Rogado*, 106 Phil. 816 (1959). See also *People v. Moreno*, 77 Phil. 549 (1940); *People v. Bernadez*, 81 Phil. 156 (1948).
- <sup>100</sup> *People v. Rogado*, G.R. No. 13025, 57 O.G. 7143 (Oct. 1961) 106 Phil. 816 (1959).
- <sup>101</sup> REV. PENAL CODE, Art. 12, pars. 5 & 6
- <sup>102</sup> *People v. Hufana*, 103 Phil. 304 (1958).
- <sup>103</sup> *People v. Beronilla*, 96 Phil. 566 (1955); *Nassiff v. People*, 73 Phil. 69 (1941).
- <sup>104</sup> CIVIL CODE, Art. 800; *People v. Fausto*, 113 Phil. 841 (1974); *People v. Bascos*, 44 Phil. 204 (1922).
- <sup>105</sup> *People v. Renegado*, G.R. No. 27031, May 31, 1974, 57 SCRA 275 (1974); *People v. Cruz* 109 Phil. 288 (1960).



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- <sup>142</sup> People v. Aglibot, C.A. G.R. No. 18460-R, April 25, 1960, 56 O.G. 6491 (Oct. 1960); People v. Valmores et al L-58636 June 24, 1983, 122 SCRA 922.
- <sup>143</sup> People v. Tin Ua 96 Phil. 738 (1955); People v. Lua Chu, 56 Phil. 44 (1931).
- <sup>144</sup> People v. Mamasalaya, *supra*.
- <sup>145</sup> G.R. No. 17599, April 24, 1967, 65 O.G. 9012 (Sept. 1969).
- <sup>146</sup> M. Hale, Please of the Crown 289 (1694).