

**ERASMUS+ Capacity Building for
Legal and Social Advancement in
the Philippines (CALESA)**



Case Study on DRUGS

KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



**ERASMUS+ Capacity Building for
Legal and Social Advancement in
the Philippines (CALESA)**



SESSION 5: PARALLEL LECTURES

Venue: Breakout Session 4 and 5

KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



DRUG-RELATED CRIMES

STRUCTURES AND SANCTIONS:

JUDICIAL INTERPRETATION ON SMALL-SCALE DRUG TRAFFICKING AND DRUG CONSUMPTION AND HARM REDUCTION POLICIES:

KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



LECTURERS:

PROF. EMILIO JOSÉ ARMAZA ARMAZA

PROF. MARÍA SOLEDAD GIL NOBAJAS



REACTORS

HON. MANUEL M. BARRIOS

HON. KARL B. MIRANDA

HON. GENER M. GITO

HON. FRANK E. LOBRIGO



PARTICIPANTS

HON. GWYN P. CALINA

HON. ROSARIO ESTER B. ORDA-CAISE

HON. MARIA SOPHIA SOLIDUM TAYLOR

HON. RAQUELEN A. VASQUEZ

ATTY. MARIA LUWALHATI C. DOROTAN-TIUSECO

ATTY. ALJUHARI U. MANGELEN

HON. HECTOR D. BUENALUZ, JR.

HON. ROMMEL SICCUAN ORDONIA

HON. ELISA R. SARMIENTO-FLORES

HON. ROWENA NIEVES A. TAN

HON. DANILO D. LEYVA

DEAN GEMY LITO L. FESTIN



PHILJA TEAM
(MODERATOR/DOCUMENTOR)

ATTY. RIA CORAZON H. BERBANO-ABLAN
(MODERATOR)

Ms. ARMIDA M. SALAZAR
(ASSISTANT DOCUMENTOR)

MR. RENANTE R. TRINIDAD
(TECHNICAL STAFF)

HON. MA. CORAZON B. GAITE-LLANDERAL
(MODERATOR)

ATTY. REGINE CONSTANCE C. REYES
(ASSISTANT DOCUMENTOR)

MR. RAMIL C. AZURIN
(TECHNICAL STAFF)





KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)
June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City





KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)
June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City





KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)
June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



CASE STUDY ON DRUGS

Mr. X was a known drug peddler in the Municipality of Candelaria. He is known to be trading illegal drugs on-line. To apprehend Mr. X, the operatives of the Philippine Drug Enforcement Agency (PDEA), hatched a buy-bust operation against Mr. X. One of the confidential agents of PDEA contacted Mr. X, informing him that somebody would buy 100 grams of methamphetamine hydrochloride or “shabu” in common parlance. Mr. X instructed the confidential agent to refer him the prospected buyer. Mr. X told the confidential agent to give the FB messenger account of the prospective buyer, which the confidential agent did.



Mr. X sent a friend request to the prospective buyer which the latter accepted. The prospective buyer sent a message to Mr. X's FB Messenger account informing the latter that he is interested to buy his merchandise. They agreed to buy and sell 100 grams of shabu. They agreed on the date, time, and place where they would meet to consummate their agreement. It was at this point that Mr. X was arrested for selling drugs. He did not know that the buyer with whom he was transacting is a member of PDEA.

In the course of such operation, a second PDEA agent (the Agent 002, who was monitoring the operation against Mr. X) observed that two



people (Mr. B and Mr. C) who were walking near the area of the operation, after observing the Mr. X's arrest, began to leave the area in a hurry. After seeing this, the Agent 002 ordered Mr. B and Mr. C to stop, then identified himself as a PDEA agent and, after that, he asked them to show him their identification documents. At this moment, Mr. B, while taking out his wallet to show the PDEA agent his ID, accidentally drops a bag containing a white powder. After seeing this, the Agent 002 frisks the two persons and finds in Mr. C's possession a bag also containing another amount of white powder. Mr. B and Mr. C stated that the white powder is cocaine and that they are regular consumers of this drug. A drug test was immediately performed, and it showed a positive result for cocaine



consumption in both cases (Mr. B and Mr. C). On the other hand, the PDEA toxicology laboratory performed an analysis of the white powder in order to know what it exactly is. The results of such analysis were:

- Mr. B was in possession of 23 grams of a white powder made of different elements, including cocaine. The percentage of pure cocaine of this powder was 15% (which means that Mr. B was in possession of 3.45 grams of pure cocaine).
- On the other hand, Mr. C was in possession of 48 grams of a white powder made of different elements, including cocaine. The percentage of pure cocaine of this powder was 17% (which means that Mr. B was in possession of 8.16 grams of pure cocaine).



1. May Mr. X be held liable for violation of Republic Act No. 9165 otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”?

- Yes, Mr. X may be held liable for *trading* under Section 5 of RA 9165, specifically for consummated trading illegal drugs online.



2. Under Spanish Law, for what crime/s may Mr. X be held liable?

- Under Spanish Law, Mr. X may not be held liable under the Spanish Criminal Code, because:
 - The act of inciting to commit a crime would lead to impunity. Note that under the Spanish Criminal Code, the legal asset is public health.
 - It may be proven during trial that the PDEA agent acting as *poseur-buyer* incited the commission of the crime.
- Moreover, there was no danger of spreading the *shabu* to other people since the drug was under the control of the PDEA agent and there was no proof of delivery. Public health was not threatened.



3. May Mr. B and Mr. C be held liable for violation of Republic Act No. 9165 otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”?

- Mr. B and Mr. C may not be held liable because there was no probable cause to conduct stop-and-frisk search.
- The act of running away from law enforcers is not a crime, per se.



4. Under Spanish Law, for what crime may Mr. B and Mr. C be held liable?

- No, they may not be held liable under Spanish Law because there was no danger to the legal asset of public health. The amount of drug involved poses no danger to public health.
- In addition, we cannot establish the intent to traffic the drug. Mr. B and Mr. C were not involved in the transaction between Mr. X and the PDEA agent.
- Mr. B and Mr. C may be considered as regular drug users since they tested positive for consumption of *shabu*.



5. Does drug addiction have any effect on the legal liability of Mr. B and Mr. C under Spanish and Philippine criminal legislations?

- Spanish
 - For possession - exempted from liability
- Philippines
 - For possession – drug addiction has no effect on the liability because under Section 15 of RA 9165, use of dangerous drugs is already absorbed in the crime of possession



6. Are there procedural safeguards provided under Spanish and Philippine criminal legislations to ensure the integrity of the evidence confiscated from the accused?

- Spanish
 - Article 374 – confiscation and destruction, with due guarantees of the drug's integrity
 - If the quantity of the drug is found to be more than for self-consumption, the defendant may be given the opportunity to prove that the said quantity is not meant for drug trafficking
 - In addition, Spanish Criminal Procedural Law also observes the preservation of the integrity of the confiscated drug – Articles 282, 292, 326, 330, 334, 338, 770.3, 796.1.6
- Philippines
 - Section 21, RA 9165
 - *People v. Romy Lim*
 - OCA Circular 251-2018, in relation to *People v. Lim*
 - DDB Regulation No. 1, series of 2002





KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (Seminar-Workshop)
June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City

