

RECENT DEVELOPMENTS IN CRIMINAL LAW IN THE PHILIPPINES

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

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



Origin of the Penal System

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Origin of the Penal System

- Common Law vs. Civil Law (Statutory Law)
- Judicial Discretion
- “*Ubi non est lex nec prevaricatio*”
- “*Nullum crimen, nulla poena sine lege*”
- **“No felony shall be punishable by any penalty not prescribed by law prior to its commission.”**
(Article 21 of the Revised Penal Code)



Sources of Philippine Criminal Laws:

1. Act No. 3815- The Revised Penal Code
2. Special Penal Laws
 - Republic Acts, Proclamations
 - Local Government Ordinances



Codigo Penal vis-à-vis The Revised Penal Code

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SPANISH INFLUENCE IN THE PHILIPPINES

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Spanish penal laws previously in force in the Philippines

1. Compilation of the Laws of Indies
2. *Partidas*
3. *Novísima Recopilación*
4. *Autos Acordados* of the *Real Audiencia de Manila*
5. *Other Royal decrees and orders*

6. **Spanish *Codigo Penal* (1870)**
7. **Old Penal Code (1887)**



Act No. 3815 - The Revised Penal Code of the Philippines

- approved on December 8, 1930; subdivided into two books
- greatly influenced by the Penal Code of Spain
- mainly based on Old or Classical School of Thought
- the penalties remained in their Spanish origin – *reclusion perpetua*, *reclusion temporal*, *prision correctional*, *prision mayor*, *arresto menor*, *arresto mayor*, *destierro*



- In case of doubt in the interpretation of the Revised Penal Code, the Supreme Court consults the original text
 - the word "imprisonment" used in the English text is a wrong translation of the phrase "sufriendo privacion de libertad" used in the Spanish text:

English	Spanish
<i>Evasion of service of sentence.</i> — The penalty of <i>prision correccional</i> in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by <u>escaping during the term of his imprisonment</u> by reason of final judgment.	ART. 157. <i>Quebrantamiento de sentencia.</i> — Sera castigado con prision correccional en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere <u>sufriendo privacion de libertad</u> por sentencia firme;

(*People vs. Abilong*, G.R. No. L-1960, November 26, 1948)



Mala in se vs. Mala prohibita

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Mala in se and Mala Prohibita Crimes

TRADITIONAL DISTINCTION

<i>Mala in se</i> ("Wrong / Evil in itself")	<i>Mala Prohibita</i> ("Wrong because Prohibited")
<ul style="list-style-type: none">Punished by the Revised Penal Code	<ul style="list-style-type: none">Punished by Special Penal Laws
Examples: Murder, Robbery, Adultery	Example: Illegal Possession of Firearms



Better Test to Distinguish between Mala in Se and Mala Prohibita

- Determine the inherent immorality or vileness of the penalized act. (*Dungo vs. People*, G.R. No. 209464, July 1, 2015)
 - *Mala in se* - Inherently immoral
 - *Mala Prohibita* - Not inherently immoral; prohibited by law



Some Notable Amendments to the Revised Penal Code

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- 1997 - ***The Anti-Rape Law of 1997*** (Republic Act No. 8353)

- reclassified rape from a crime against chastity into a crime against persons
- At present, there are 2 modes of rape:

<i>Rape by sexual intercourse</i>	(a) offender is a man; (b) carnal knowledge of a woman; (c) through force or intimidation
<i>Rape by sexual assault</i>	(a) the offender may be a man or a woman; (b) the offended party may be a man or a woman; (c) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person (<i>People v. Caoili</i> ; 2017)

- 2012 – ***An Act Decriminalizing Vagrancy*** (RA No. 10158)
- 2015 – ***An Act Repealing the Crime of Premature Marriage*** (RA No. 10655)
 - Purpose of penalizing premature marriage: prevent doubtful paternity of child



Penalties

- 2006 – *An Act Prohibiting the Imposition of Death Penalty* (R.A. No. 9346)
 - When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of Republic Act (R.A.) No. 9346, the qualification of “without eligibility for parole” shall be used to qualify *reclusion perpetua*
- 2017 – *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based* (R.A. No.10951)
 - Adjusted the amount of imposable fines and value of property on which a penalty is based
 - *Corpuz vs. People* (G.R. No. 180016, April 29, 2014)



Corpuz vs. People (2014)

“There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. xxx

However, this Court cannot modify the said range of penalties because that would constitute judicial legislation.”

Remedy: Article 5 of the RPC

ART. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.* x x x



- 2019 - *Community Service Act* (R.A. No.11362)
 - Community service - any actual physical activity which inculcates civic consciousness; improvement of a public work; promotion of a public service
 - penalties of *arresto menor* and *arresto mayor*
 - Court discretion



Overview of the Recent Special Penal Laws

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Terrorism

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Philippine Laws on Terrorism

- **No crime of terrorism** under the **Revised Penal Code**
- ***Human Security Act of 2007*** (Republic Act 9372) (2007)
 - terrorism is committed when the following elements concur:
 - (1) **predicate crimes;**
 - (2) **characteristic: sow and create a condition of widespread and extraordinary fear and panic among the populace; and**
 - (3) **purpose: coerce the government to give in to an unlawful demand**
(*Southern Hemisphere v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010)



Southern Hemisphere v. Anti-Terrorism Council

- A facial invalidation of a statute is allowed only in free speech cases
 - to avert the "chilling effect" on protected speech
 - inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct
- Since a penal statute may only be assailed for being vague as applied to petitioners, a limited vagueness analysis of the definition of "terrorism" in RA 9372 is legally impermissible absent an actual or imminent charge against them
- RA 9372 seeks to penalize conduct, not speech
- Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct.
 - Since speech is not involved here, the Court cannot heed the call for a facial analysis.



- ***Terrorism Financing Prevention and Suppression Act of 2012*** (RA 10168)
 - penalizes the crime of financing of terrorism
- ***Anti-Terrorism Act of 2020*** (Republic Act No. 11479) (2020)
 - repealed the Human Security Act of 2007



Anti Terrorism Act of 2020: Salient Features

1. Punishment of **Inchoate Crimes**

- threat to commit terrorism, planning, training, facilitating, proposal and inciting to terrorism, recruitment, among others

2. Removal of requirement of **Predicate Crimes**

3. Preliminary Proscription

4. Detention without Judicial Warrant of Arrest



Calleja vs. Executive Secretary

G.R. No. 252578, December 7, 2021

- Upheld the Anti-Terrorism Act
- However, 2 provisions were declared **unconstitutional**:

1.) “Not intended Clause” of Section 4, for being violative of freedom of expression:

*“Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, **which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.**”*

“To the Court's mind, it was enough for Congress to state that terrorism as defined in Section 4 "shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights." However, Congress unnecessarily included the "Not Intended Clause," thereby invading the area of protected freedoms. xxx (*Calleja vs. Executive Secretary*)



Calleja vs Executive Secretary

2.) The second mode of designation under Paragraph 2 of Section 25, was declared unconstitutional for failing to pass strict scrutiny and overbreadth tests.

The second mode of designation under Section 25 states:

Section 25. *Designation of Terrorist Individual, Group of Persons, Organizations or Associations.* — x
x x

Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.

- “The ATC has unbridled discretion to make its own determination based loosely on “the criteria for designation of UNSCR No. 1373,” without any further sufficient parameters for its guidance. xxx” (*Calleja vs. Executive Secretary*)



Drugs

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CHAIN OF CUSTODY

- the duly recorded authorized movements and custody of seized drugs xxx from the time of seizure to receipt in the forensic laboratory to safekeeping to presentation in court (DDB Regulation No. 1, Series of 2002)
- Purpose: preserve the integrity of the seized drugs
- Links (*People v. Kamad*, G.R. No. 174198, January 19, 2010)
 1. Seizure and marking of the illegal drug by the apprehending officer
 2. Apprehending officer to the investigating officer
 3. Investigating officer to the forensic chemist for laboratory examination
 4. Forensic chemist to the court



WITNESSES

RA 9165 (3 witnesses)	RA 10640 (Effectivity: August 7, 2014) (2 witnesses)
<ol style="list-style-type: none"> 1. any elected public official 2. representative from the media <u>and</u> 3. From the Department of Justice (DOJ) 	<ol style="list-style-type: none"> 1. an elected public official, <u>and</u> 2. Representative from the National Prosecution Service <u>or</u> the media



PLEA BARGAINING

- Previously, Plea-bargaining was NOT ALLOWED under Sec.23 of RA 9165
- *Estipona, Jr. v. Lobrigo* (G.R. No. 226679, August 15, 2017)
 - Section 23 is unconstitutional for being contrary to the rule-making authority of the Supreme Court as provided under the Constitution
- *Nurullaje Sayre v. Hon. Dax Gonzaga Xenos, et al.* (G.R. No. 244413, February 18, 2020)
 - AM No. 18-03-16-SC is a framework to guide the trial courts in plea bargaining; DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.



A.M. No. 18-03-16-SC *vis-à-vis* DOJ Circular No. 018 (2022)

Offense Charged in Information	Allowed Plea Bargaining Framework in Drugs Cases A.M. No. 18-03-16-SC (2018)	Allowed Plea Bargaining under DOJ Circular No. 018 (2022)
Section 5 Sale, Trading, etc. of Dangerous Drugs Penalty: Imprisonment of 12 yrs. & 1 day to 20 yrs. and Fine of P100,000 to P500,000	<p>Section 12 Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</p> <p>Penalty: Imprisonment of 6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000</p> <p>*For .01 gram to .99 grams of “shabu,” and .01 gram to 9.99 grams of marijuana only *For 1.00 gram and above of shabu and/or 10 grams and above of marijuana, no plea bargaining allowed</p>	<p>Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs</p> <p>Penalty: Imprisonment of 6 mos. & 1 day to 4 yrs. and Fine from P10,000 to P50,000</p> <p>*Plea bargaining is allowed only when the drugs involved is less than 0.01g to 0.99g of “shabu” and/or 0.01g to 9.99g of marijuana</p>



DOJ Department Circular No. 18 (May 10, 2022)

Offense Charged in Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 5 Sale, Trading, etc. of Dangerous Drugs	Life Imprisonment to Death Fine – P500,00 to P10,000,000	Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs *Plea bargaining is allowed only when the drugs involved is 0.01g to 0.99g of “shabu” and/or 0.01g to 9.99g of marijuana	Imprisonment of 6 mos. & 1 day to 4 yrs. and Fine from P10,000 to P50,000



Destruction of Drugs

Rule on Destruction and Disposal of Seized Dangerous Drugs Prior to the Filing of an Information; *A.M. No. 21-02-01-SC*

- Purpose – prevent recycling of illegal drugs

Dangerous drugs, other substances, and equipment seized by virtue of Search Warrant	Without Search Warrant
Filed before the court which issued the search warrant	filed before the court which has territorial jurisdiction over the case and the place where the dangerous drugs, other substances, and instruments were found and seized



Youth Justice

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Juvenile Justice and Welfare Act (Republic Act No. 9344)

- Absolute exemption– 15 years of age or under

“SECTION 6. *Minimum Age of Criminal Responsibility.* — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. x x x

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability x x x unless he/she has acted with discernment x x x



An Act Providing for Stronger Protection Against Rape and Sexual Exploitation, Increasing the Age for Determining the Commission of Statutory Rape (Republic Act No. 11648) (2022)

- Reason: majority of rape and sexual abuse victims in the Philippines are 13-15 years old

	Victim's Age - Revised Penal Code, as amended by the Anti- Rape Law	Victim's Age - Republic Act No. 11648	Republic Act No. 11648
Statutory Rape	under twelve (12) years of age or is demented	under sixteen (16) years of age or is demented	Exception: age difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non- abusive, and non-exploitative Exception to the Exception: victim is under thirteen (13) years of age



	RA 7610 - Special Protection of Children Against Abuse, Exploitation, and Discrimination Act	Republic Act No. 11648
Section 5. Child Prostitution and Other Sexual Abuse.	(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period	“under twelve (12) years of age” was amended to “ <u>under sixteen (16) years of age</u> ”

Gender

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Anti-Sexual Harassment Act of 1995

(Republic Act No. 7877)

- penalized acts of sexual harassment in a work-related or employment environment and in an education or training environment
- Lapses of RA 7877:
 - **limited** to work-related or employment environment and to an education or training environment
 - **requires** the existence of authority, influence or moral ascendancy between the offender and the offended party.
 - **does not cover** sexual harassment between peers or co-employees, or those committed against a superior



Safe Spaces Act (Republic Act No. 11313) (2019)

- recognized that sexual harassment can be committed between peers, or by a subordinate to a superior officer
- covers **all forms of gender-based sexual harassment** committed in public spaces, educational or training institutions, workplace, as well as online space

An Act Prohibiting the Practice of Child Marriage (Republic Act No. 11596) (2021)

- criminalizes the acts of facilitating child marriage, solemnization of child marriage, and cohabitation of an adult with a child outside wedlock



Anti-Violence Against Women and Their Children Act

(Republic Act No. 9262) (2004)

- addressed the prevalence of violence against women and their children by their intimate partner
- Committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate
- physical, sexual, psychological harm or suffering, or economic abuse



Conclusion



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- “CALESA” – horse-drawn carriage
- Overview of some of the various topics - principles of criminal law, penalties, terrorism, drugs, gender, youth justice, among others
- Our various criminal law professors will give a more in-depth discussion for each

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