

REVISED RULES ON CRIMINAL PROCEDURES

PRELIMINARY CHAPTER

★ What is criminal procedure?

Criminal procedure is the method prescribed by law for the apprehension and prosecution of persons accused of any criminal offense and for their punishment, in case of conviction.

★ What is criminal procedure concerned with?

Criminal procedure is concerned with the procedural steps through which the criminal case passes, commencing with the initial investigation of a crime and concluding with the unconditional release of the offender. It is a generic term used to describe the network of laws and rules which govern the procedural administration of criminal justice.

★ What are the sources of criminal procedure?

1. Spanish Law of Criminal Procedure
2. General Order No. 58, dated April 23 1900
3. Amendatory acts passed by the Philippine Commission
4. The various quasi acts, the Philippine Bill of 1902, the Jones Law of 1916, the Tydings-McDuffie Law, and the Constitution of the Philippines
5. The Rule of Court of 1940, and the 1964, 1985, and 1988 Rules on Criminal Procedure
6. Various Republic Acts (RA 240, Judiciary Act, RA 8249 creating the Sandiganbayan, Speedy Trial Act)
7. Presidential Decrees
8. 1987 Constitution, particularly Art. III Bill of Rights
9. Civil Code (Art. 32, 33, 34)
10. Certain judicial decisions
11. RA 8393 The Speedy Trial Act
12. Circulars
13. The Revised Rules on Criminal Procedure (Dec 1, 2000)

★ What are the three systems of criminal procedure?

1. Inquisitorial – the detection and prosecution of offenders are not left to the initiative of private parties but to the officials and agents of the law. Resort is made to secret inquiry to discover the culprit, and violence and torture are often employed to extract confessions. The judge is not limited to the evidence brought before him but could proceed with his own inquiry which was not confrontative.
2. Accusatorial – The accusation is exercised by every citizen or by a member of the group to which the injured party belongs. As the action is a combat between the parties, the supposed offender has the right to be confronted by his accuser. The battle in the form of a public trial is judged by a magistrate who renders a verdict. **The essence of the accusatorial system is the right to be presumed innocent.** To defeat this presumption, the prosecution must establish proof of guilt beyond reasonable doubt (moral certainty).
3. Mixed – This is a combination of the inquisitorial and accusatorial systems. The examination of defendants and other persons before the filing of the complaint or information is inquisitorial.

The judicial set-up in the Philippines is **accusatorial or adversary in nature**. It contemplates two contending parties before the court, which hears them impartially and renders judgment only after trial.

★ Distinguish between criminal law and criminal procedure.

Criminal law is substantive; it defines crimes, treats of their nature, and provides for their punishment. Criminal procedure, on the other hand, is remedial or procedural; it provides for the method by which a person accused of a crime is arrested, tried and punished. Criminal law declares what acts are punishable, while criminal procedure provides how the act is to be punished.

★ How are the rules of criminal procedure construed?

The rules of criminal procedure shall be liberally construed in favor of the accused and strictly against the state to even the odds in favor of the accused against whom the entire machinery of the state is mobilized.

★ What is jurisdiction?

Jurisdiction (in general) is the power or authority given by the law to a court or tribunal to hear and determine certain controversies. It is the power of courts to hear and determine a controversy involving rights which are demandable and enforceable.

★ Distinguish jurisdiction from venue.

Venue is defined as the particular country or geographical area in which a court with jurisdiction may hear and determine a case. It means the place of trial. On the other hand, jurisdiction is the power of the court to decide the case on the merits. Venue is thus procedural, while jurisdiction is substantive. In civil cases, venue may be waived or stipulated by the parties. On the other hand, jurisdiction is granted by law or the Constitution and cannot be waived or stipulated.

★ What is criminal jurisdiction?

Criminal jurisdiction is the authority to hear and try a particular offense and impose the punishment for it.

★ What are the elements of jurisdiction in criminal cases?

1. The nature of the offense and/or the penalty attached thereto
2. The fact that the offense has been committed within the territorial jurisdiction of the court.

★ What are the requisites for a valid exercise of criminal jurisdiction?

1. Jurisdiction over the person
2. Jurisdiction over the territory
3. Jurisdiction over the subject matter

★ What is jurisdiction over the subject matter?

It is the power to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines its powers.

★ Which law determines the jurisdiction of the court – the law in force at the time of the commission of the offense or the one in force as of the time when the action is filed?

Jurisdiction is determined by the law as of the time when the action is filed, not when the offense was committed. The exception to this rule is where jurisdiction is dependent on the nature of the position of the accused at the time of the commission of the offense. In this case, jurisdiction is determined by the law in force at the time of the commission of the offense.

★ What is adherence of jurisdiction?

The principle of Adherence of Jurisdiction means that once jurisdiction is vested in the court, it is retained up to the end of the litigation. It remains with the court until the case is finally terminated. The exception to this is where a subsequent statute changing the jurisdiction of a court is given retroactive effect, it can divest a court of jurisdiction over cases already pending before it before the effectivity of the statute.

★ A was charged with an offense whose penalty was below 6 years. The case was filed with the MTC. After trial, the MTC convicted him of an offense with a higher penalty. A questioned the conviction, claiming that the MTC had no jurisdiction over the offense since the penalty prescribed for it was higher than 6 years. Is A correct?

A is wrong. Jurisdiction over the subject matter is determined by the authority of the court to impose the penalty imposable given the allegation in the information. It is not determined by the penalty that may be meted out to the offender after trial but to the extent of the penalty which the law imposes for the crime charged in the complaint.

★ If during the proceedings, the court finds that it has no jurisdiction, how should it proceed?

Where the court has no jurisdiction, lower courts should simply dismiss the case. On the other hand, the Supreme Court and the Court of Appeals may refer the case to the court of proper jurisdiction.

★ What is the jurisdiction of Municipal Trial Courts in criminal cases?

1. Exclusive original jurisdiction over all **violations of city or municipal ordinances** committed within their respective territorial jurisdiction;
2. Exclusive original jurisdiction **over all offenses punishable with imprisonment not exceeding 6 years** regardless of the fine and other accessory penalties and civil liability
3. Offenses involving **damage to property through criminal negligence**
4. Where the only penalty provided by law is a fine: exclusive original jurisdiction over offenses punishable with a **fine not exceeding P4,000**
5. Election offenses: **Failure to register or failure to vote**
6. Special Jurisdiction to hear and decide petitions for a writ of **habeas corpus** or application for **bail** in the province or city where the **RTC judge is absent**
7. BP 22 (?)

★ **What is the jurisdiction of Regional Trial Courts in criminal cases?**

1. Exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those falling under the exclusive and concurrent jurisdiction of the Sandiganbayan. → All criminal cases where the penalty is higher than 6 years, including government-related cases wherein the accused is not one of those falling under the jurisdiction of the Sandiganbayan.
2. Other laws which specifically lodge jurisdiction in the RTC:
 - a. Law on written defamation or libel
 - b. Decree on Intellectual Property
 - c. Dangerous Drugs Cases except where the offenders are under 16 and there are Juvenile and Domestic Relations Courts in the province
3. Appellate jurisdiction over all cases decided by MTCs in their respective territorial jurisdiction.
4. In areas where there are no family courts, the cases falling under the jurisdiction of family courts shall be adjudicated by the RTC

★ **What is the meaning of the term “regular courts”?**

Regular courts refer to civil courts as opposed to military courts or courts martial. Military courts have no jurisdiction over civilians.

★ **Which court has jurisdiction over a complex crime?**

Jurisdiction over the whole complex crime is lodged with the trial court having jurisdiction to impose the maximum and more serious penalty on an offense forming part of the complex crime.

★ **What is territorial jurisdiction?**

The requirement of territorial jurisdiction means that a criminal action should be filed in the place where the crime was committed, except in those cases provided by Article 2 of the Revised Penal Code.

★ **How is jurisdiction over the person of the accused acquired?**

Jurisdiction over the person of the accused is acquired upon his arrest or upon his voluntary appearance or submission to the court.

★ **Can jurisdiction over the person of the accused be waived?**

Yes, unlike jurisdiction over the offense which is conferred by law or the Constitution, jurisdiction over the person of the accused may be waived. For example, any objection to the procedure leading to the arrest must be opportunely raised before the accused enters his plea, or it is deemed waived.

★ **X was charged in court with an offense. X filed a motion to quash on the ground that the court had no jurisdiction over his person because the arrest was illegal and because the information was incomplete. Can X invoke lack of jurisdiction of the court over his person?**

No, X cannot invoke the lack of jurisdiction of the court. One who desires to object to the jurisdiction of the court over his person must appear in court for that purpose only, and if he raises other questions, he waives the objection.

★ **Is the presence of the accused necessary in order for the court to act on a motion?**

It is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss a case or grant other relief. The outright dismissal of the case even before the court acquires jurisdiction over the person of the accused is allowed, except in applications for bail, in which case, the presence of the accused is mandatory.

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★ **How are criminal actions instituted?**

Criminal actions shall be instituted as follows:

- (a) For offenses where a preliminary investigation is required, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.
- (b) For all other offenses, by filing the complaint or information directly with the MTC or the complaint with the office of the prosecutor.

★ **What is the effect of the institution of the criminal action on the period of prescription of the offense?**

The institution of the criminal action shall interrupt the running of the period of prescription of the offense unless otherwise provided in special laws. The rule

does not apply to violations of municipal ordinances and special laws. The prescriptive periods for violations of special laws are interrupted only by the institution of judicial proceedings for their investigation and punishment, while violations of municipal ordinances prescribe after two months.

★ **Distinguish “institution” from “commencement” of an action.**

For offenses which require a preliminary investigation, the criminal action is instituted by filing the complaint for preliminary investigation. The criminal action is commenced when the complaint or information is filed in court.

★ **Can the offended party go directly to court to file a criminal action?**

No. Before a complaint is filed in court, there should have been a confrontation between the parties before the Lupon chairman. The Lupon secretary must certify that no conciliation or settlement was reached, attested to by the Lupon chairman. The complaint may also be filed if the settlement is repudiated by the parties.

★ **Are there exceptions when the parties may go directly to court?**

1. Where the accused is under detention
2. Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings
3. Where actions are coupled with provisional remedies
4. Where the action may be barred by the statute of limitations

★ **When are amicable settlements not allowed?**

1. Where one party is the government
2. Where one party is a public officer or employee and the dispute relates to the performance of his official functions
3. Offenses punishable by imprisonment exceeding 1 year or a fine exceeding P5,000
4. Where there is no private offended party
5. Where the dispute involves real properties located in different cities or municipalities
6. Disputes involving parties who reside in different barangays, cities, or municipalities
7. Other cases which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

★ **What is the form required for the complaint or information?**

The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

★ **Why should a complaint or information be in the name of the People of the Philippines?**

Criminal actions must be commenced in the name of the People because just as a crime is an outrage against the peace and security of the people at large, so must its vindication be in the name of the People. However, if the action is instituted in the name of the offended party or of a particular city, the defect is merely of form and may be cured at any state of the trial.

★ **Why should the complaint or information be in writing?**

The complaint or information should be in writing so that the court has a basis for its decision, to inform the accused of the nature and cause of the accusation to allow him to present his defense, and so that nobody will forget the charge, given the fallibility of human memory.

★ **What is a complaint?**

A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

★ **Who may file a complaint?**

The complaint may be filed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

★ **Who is the “offended party”?**

The offended party is the person actually injured or whose feeling is offended. He is the one to whom the offender is also civilly liable under Article 100 of the RPC.

★ **If the offended party dies before he is able to file a complaint, can his heirs file it in his behalf?**

No. The right to file a criminal action is personal and abates upon the death of the offended party. It is not transmissible to the heirs.

★ **Can you file a criminal complaint against a juridical person?**

No, a criminal action cannot lie against a juridical person. If the corporation violates the law, the officer, through whom the corporation acts, answers criminally for his acts.

★ **May criminal prosecutions be enjoined?**

No. Public interest requires that criminal acts must be immediately investigated and prosecuted for the protection of society.

★ **What are the exceptions to the rule that criminal prosecutions may not be enjoined?**

1. To afford adequate protection to constitutional rights of the accused
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions
3. Where there is a prejudicial question which is subjudice
4. When the acts of the officer are without or in excess of authority
5. Where the prosecution is under an invalid law, ordinance, or regulation
6. When double jeopardy is clearly apparent
7. Where the court had no jurisdiction over the offense
8. Where it is a case of persecution rather than prosecution
9. Where the charges are manifestly false and motivated by the lust for vengeance
10. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied
11. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.

★ **If the complaint is not sworn to by the offended party, is it void?**

No. A complaint presented by a private person when not sworn to by him is not necessarily void. The want of an oath is a mere defect of form which does not affect the substantial rights of the defendant on the merits.

★ **When is a complaint required?**

A sworn written complaint is required if the offense is one which **cannot be prosecuted de officio**, or is **private in nature** (adultery, concubinage, abduction, seduction, acts of lasciviousness, defamation consisting in the imputation of any of the above offenses), or where it pertains to those cases which **need to be endorsed by specific public authorities** (Anti-Dummy Board with respect to the Anti-Dummy Law, National Water and Air Pollution Control Commission with respect to the Anti-Pollution Law).

★ **What is an information?**

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.

★ **What is the difference between a complaint and an information?**

COMPLAINT	INFORMATION
May be signed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated	Always signed by prosecuting officer
Sworn to by the person signing it	Need not be under oath since the prosecuting officer filing it is already acting under his oath of office
May be filed either with the office of the prosecutor or with the court	Always filed with the court

★ **Who must prosecute criminal actions?**

The general rule is that all criminal actions commenced by the filing of a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts and Municipal Circuit Trial Courts, if the prosecutor is not available, the offended party, any peace officer, or other officer charged with the enforcement of the law violated may prosecute. This authority ceases upon actual intervention by a prosecutor or upon elevation of the case to the RTC.

★ **Can a prosecutor be compelled to file a particular complaint or information?**

No. A prosecutor is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to support the allegations thereof. The exercise of such judgment and discretion may generally not be compelled by mandamus, except if the prosecutor shows evident bias in filing the information and refuses to include a co-accused without justification. But before filing for mandamus to compel a fiscal to include another co-accused in the information, the party must first avail himself of other remedies such as the filing of a motion for inclusion.

★ **To whom should you appeal the decision of the prosecutor?**

The decision of the prosecutor may be modified by the Secretary of Justice or in special cases by the President of the Philippines.

★ **Is the prosecutor required to be physically present in the trial of a criminal case?**

According to *People v. Beriales (1976 case)*, he should be present. If he is not physically present, it cannot be said that the prosecution was under his direction and control.

But in *People v. Malinao* and *Bravo v. CA*, it was held that the proceedings are valid even without the physical presence of the Fiscal who left the prosecution to the private prosecutor under his supervision and control.

★ **After the case is filed in court, to whom should a motion to dismiss be addressed?**

Once the information is filed in court, the court acquires jurisdiction. Whatever disposition the prosecutor may feel should be proper in the case thereafter should be addressed for the consideration of the court, subject only to the limitation that the court should not impair the substantial rights of the accused or the right of the people to due process.

★ **Where should a motion for reinvestigation be filed?**

After a complaint or information has already been filed in court, a motion for reinvestigation should be addressed to the trial judge and to him alone.

★ **If, after he has filed the case, the prosecutor thinks that a prima facie case exists, can he refuse to prosecute?**

No, he cannot refuse to prosecute. He is obliged by law to proceed and prosecute the criminal action. He cannot impose his opinion on the court.

★ **What is the distinction between the control by the prosecution and the control by the court?**

Before a case is filed in court, the prosecution has control over the following:

1. What case to file
2. Whom to prosecute
3. The manner of prosecution
4. The right to withdraw the case before arraignment even without notice and hearing.

After a case is filed in court, the court has control over the following:

1. The suspension of arraignment
2. Reinvestigation
3. Prosecution by the prosecutor
4. Dismissal
5. Downgrading of the offense or dropping of the accused even before plea

★ **What are the limitations on the control by the Court?**

(SINNATRa)

1. Prosecution is entitled to **N**otice of hearing
2. The Court must **A**wait the result of a petition for review
3. The prosecution's stand to maintain prosecution should be **R**espected by the court
4. The ultimate **T**est of the court's independence is where the prosecutor files a motion to dismiss or withdraw the information
5. The Court has authority to review the **S**ecretary's recommendation and reject if there is grave abuse of discretion.
6. To reject or grant a motion to dismiss, the court must make its own **I**ndependent assessment of the evidence.
7. Judgment is void if there is **N**o independent assessment and finding of grave abuse of discretion.

★ **What are the crimes that must be prosecuted upon complaint of the offended party?**

1. Adultery and concubinage
2. Seduction, abduction, acts of lasciviousness
3. Defamation which consists in the imputation of an offense mentioned above

★ **What is a private crime?**

Private offenses are those which cannot be prosecuted except upon complaint filed by the aggrieved party. Strictly speaking, there is no such thing as a private offense since all offenses are an outrage against the State. They are denominated as private offenses only to give deference to the offended party

who may prefer not to file the case instead of going through the scandal of a public trial.

★ After a complaint for a private crime has been filed in court, what is the effect of pardon by the offended party?

The pardon by the offended party will not have any effect on the prosecution of the offense. Once a complaint has been filed in court, jurisdiction over the offense will be acquired and will continue to be exercised by the court until termination of the case.

★ What is the meaning of the statement that compliance with the rule is jurisdictional?

This means that the complaint filed by the offended party is what starts the prosecution, without which the courts cannot exercise their jurisdiction. Compliance with the rule does not confer jurisdiction because it is the law which confers jurisdiction upon the courts.

★ Can the father file a complaint on behalf of his daughter for concubinage?

No. The rule allowing the parents, grandparents, and guardians to file a complaint on behalf of the minor applies only to the offenses of seduction, abduction, and acts of lasciviousness. A complaint for adultery or concubinage may be filed only by the offended spouse.

★ If the offended party in abduction, seduction, and acts of lasciviousness is of age, can her parents file the complaint for her?

No. If the offended party is already of age, she has the exclusive right to file the complaint unless she becomes incapacitated. The parents, grandparents, and guardian only have exclusive, successive authority to file the case if the offended party is still a minor.

★ If the offended party dies during the pendency of the case, is the criminal liability of the accused extinguished?

No.

★ X filed a sworn complaint for acts of lasciviousness before the prosecutor. Before the prosecutor could file the case in court, X died. Can the prosecutor still file the information in court?

Yes. The desire of X to file the case is evident by her filing of her sworn complaint with the prosecutor.

★ An information for robbery with rape was filed against X. X moved to dismiss the information on the ground that there was no complaint filed by the offended party. Should the case be dismissed?

No. In robbery with rape, the complaint of the offended party is not necessary since the offense of robbery is not a private offense. The prosecution can be commenced without the complaint of the offended party.

★ When is a complaint or information is deemed sufficient?

A complaint or information is sufficient if it states:

1. the name of the accused
2. the designation of the offense given by the statute
3. the acts or omissions complained of as constituting the offense
4. the name of the offended party
5. the approximate date of the commission of the offense
6. the place of the commission of the offense

★ When is the error in the name of the accused not fatal to an information?

Error in the name of the accused will not nullify the information if it contains sufficient description of the person of the accused.

★ When should the error in the name or identity be raised by the accused?

The error should be raised before arraignment, or else it is deemed waived.

★ X was charged with homicide. Can he be possibly be convicted of murder?

Yes. If the recitals in the complaint or information of the acts and omissions constituting the offense actually allege murder, X can be convicted of murder. This is because it is the recital of facts and not the designation of the offense that is controlling.

★ X was charged with estafa, but the recital of facts actually alleges theft. Can X be convicted of theft?

Yes, because it is the recital, not the designation of the offense that is controlling.

★ X was charged with estafa, and the recital of facts allege estafa. Can X be convicted of theft?

No. The two crimes have elements that are different from each other. To convict X of theft under an information that alleges estafa would violate his right to be informed of the nature and cause of the accusation against him.

★ X was charged with rape committed through force and intimidation. Can he be convicted of rape where the woman is deprived of reason or is otherwise unconscious?

No. Where the law distinguishes between two cases of violation of its provision, the complaint or information must specify under which of the two cases the defendant is being charged.

★ In what case can an accused not be convicted of a crime different from that designated in the complaint or information even if the recitals allege the commission of the crime?

If it involves:

1. a change of the theory of the trial
2. requires of the defendant a different defense
3. surprises the accused in any way

★ X was accused of illegal possession of firearms, but the information did not allege that X did not have any license to possess the firearm. Is the information valid?

No. The absence of the license is an essential element of the offense. Therefore, it should be alleged in the complaint or information.

★ X was charged with illegal possession of opium. X contends that the information was invalid for failure to allege that he did not have a prescription from a physician. Is X correct?

No. The absence of the prescription is not an essential element of the offense and is only a matter of defense. It need not be alleged in the information.

★ What are the offenses in which the particular place where the offense was committed is essential?

1. Violation of domicile
2. Penalty on the keeper, watchman, visitor of opium den
3. Trespass to dwelling
4. Violation of election law (prohibiting the carrying of a deadly weapon within a 30-meter radius of polling places)

★ What are the offenses in which the time of the commission of the offense is essential?

1. Infanticide
2. Violation of Sunday Statutes (Election Law)
3. Abortion

★ In what case is the name of the offended party dispensable?

In offenses against property, the name of the offended party may be dispensed with as long as the object taken or destroyed is particularly described to property identify the offense.

★ In what cases is the name of the offended party indispensable?

Slander, robbery with violence or intimidation.

★ What is the rule on duplicity of offenses?

A complaint or information must charge only one offense, except when the law provides only one punishment for various offenses (compound and complex crimes under Art. 48 of the RPC and special complex crimes).

★ What is the effect of the failure of the accused to object to a duplicitous information?

If the accused fails to object before arraignment, the right is deemed waived, and he may be convicted of as many offenses as there are charged.

★ X fired his gun once, but the bullet killed two persons. He was charged with two counts of homicide in one information. Can he be convicted under that information?

Yes. It falls under the exception to the rule. This is a compound crime in which one act results in two or more grave or less grave felonies. The law provides only one penalty for the two offenses.

★ X was charged with both robbery and estafa in one information. Can he be convicted of both offenses?

It depends. If he objects to the duplicitous information before arraignment, he cannot be convicted under the information. But if he fails to object before arraignment, he can be convicted of as many offenses as there are in the information.

★ **What is the principle of absorption?**

In cases of rebellion, other crimes committed in the course of the crime are deemed absorbed in the crime of rebellion either as a means necessary for its commission or as an unintended effect of rebellion. They cannot be charged as separate offenses in themselves. The exception is when the common crimes are committed without any political motivation. In such a case, they will not be absorbed by rebellion.

★ **If homicide or murder is committed with the use of an unlicensed firearm, how many offenses are there?**

There is only one offense – murder or homicide aggravated by the use of unlicensed firearm. This is by special provision of RA 8294. (*Dissenting opinion of J. Sabio – How can you complex when one is an RPC offense/malum in se and the other is a violation of a special law/malum prohibitum?*)

★ **X was speeding on a highway when his car collided with another car. The other car was totally wrecked and the driver of the other car suffered serious physical injuries. How many informations or complaints should be filed against X?**

Only one information should be filed for serious physical injuries and damage to property through reckless imprudence. The information against X cannot be split into two because there was only one negligent act resulting in serious physical injuries and damage to property.

★ **Same case, but the injuries suffered by the driver were only slight physical injuries. How many informations should be filed?**

Two informations – one for the slight physical injuries and the other for damage to property. Light felonies cannot be complexed.

★ **When can a complaint or information be amended?**

BEFORE PLEA, a complaint or information can be amended in form or in substance without leave of court, except if the amendment will downgrade the offense or drop an accused from the complaint or information. In such a case, the following requisites must be observed:

1. must be made upon motion of the prosecutor
2. with notice to the offended party
3. with leave of court
4. the court must state its reason in resolving the motion
5. copies of the resolution should be furnished all parties, especially the offended party

AFTER PLEA, only formal amendments may be made only with leave of court and when it can be done without causing prejudice to the rights of the accused.

★ **When can a complaint or information be substituted?**

A complaint or information may be substituted if at any time before judgment, it appears that a mistake has been made in charging the proper offense, and the accused cannot be convicted of the offense charged or of any other offense necessarily included therein, provided that he will not be placed in double jeopardy.

★ **What are the distinctions between amendment and substitution?**

1. Amendment may involve either formal or substantial changes, while substitution necessarily involves a substantial change.
2. Amendment before plea can be effected without leave of court, but substitution is always done with leave of court since it involves the dismissal of the original complaint.
3. Where the amendment is only as to form, there is no need for a new preliminary investigation or plea; in substitution, another preliminary investigation and plea is required.
4. An amended information refers to the same offense charged or to one which necessarily includes or is necessarily included in the original charge, hence substantial amendments after plea cannot be made over the objection of the accused. Substitution requires that the new information is for a different offense which does not include or is not necessarily included in the original charge.

★ **When are the rights of the accused prejudiced by an amendment?**

1. When a defense which he had under the original information would no longer be available

2. When any evidence which he had under the original information would no longer be available
3. When any evidence which he had under the original information would no longer be applicable to the amended information

★ **What are substantial amendments?**

After plea, substantial amendments are prohibited. These are amendments involving the recital of facts constituting the offense and determinative of the jurisdiction of the court. All other matters are merely of form.

★ **Is an additional allegation of habitual delinquency and recidivism a substantial amendment?**

No. These allegations only relate to the range of the imposable penalty but not the nature of the offense.

★ **Is an additional allegation of conspiracy a substantial amendment?**

Yes because it changes the theory of the defense. It makes the accused liable not only for his own acts but also for those of his co-conspirators. (*Old J. Sabio answer*)

The new answer is: No, it is not a substantial amendment in the following example: X is charged with murder as principal. Later, the complaint is amended to include two other persons who allegedly conspired with X. Can X invoke double jeopardy on the ground that the amendment is substantial? → No. The amendment is merely a formal amendment because it does not prejudice the rights of X, who was charged as a principal to begin with.

★ **Is a change in the items stolen by the accused a substantial amendment?**

Yes because it affects the essence of the imputed crime and would deprive the accused of the opportunity to meet all the allegations in preparation of his defense.

★ **Is a change in the nature of the offense due to supervening event a substantial amendment?**

No, it is merely a formal amendment.

★ **Can the court order the dismissal of the original complaint before a new one is filed in substitution?**

No. The court will not order the dismissal until the new information is filed.

★ **Where should a criminal action be instituted?**

a. In the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred (Exception: Sandiganbayan cases)

b. If committed in a train, aircraft, or other public or private vehicle: in the court of any municipality or territory where the vehicle passed during its trip, including the place of departure or arrival

c. If committed on board a vessel in the course of its voyage: in the court of the first port of entry or of any municipality or territory where the vessel passed during the voyage, subject to the generally accepted principles of international law

d. Crimes committed outside the Phil but punishable under Article 2 of the RPC: any court where the action is first filed.

★ **What is a continuing or transitory offense?**

Transitory offenses are crimes where some acts material and essential to the crimes and requisite to their commission occur in one municipality or territory and some in another. Continuing offenses are consummated in one place, yet by the nature of the offense, the violation of the law is deemed continuing. Examples are estafa, abduction, malversation, libel, kidnapping, violation of BP22.

★ **How do you determine jurisdiction over a continuing crime?**

The courts of the territories where the essential ingredients of the crime took place have concurrent jurisdiction. But the court which first acquires jurisdiction excludes the other courts.

★ **What are the rules on venue in libel cases?**

a. The criminal action for libel may be filed in the RTC of the province or the city where the libelous article is printed and first published.

b. If the offended party is a private individual, the criminal action may also be filed in the RTC of the province where he actually resided at the time of the commission of the offense.

c. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the criminal action may be filed in the RTC of Manila.

d. If the offended party is a public officer whose office is outside Manila, the action may be filed in the RTC of the province or city where he held office at the time of the commission of the offense.

★ **Can the offended party intervene in the prosecution of the criminal action?**

Yes, except if he has waived, has reserved his right, or has already instituted the criminal action. The reason for this rule is because of Article 100 of the RPC which provides that every person criminally liable shall also be civilly liable and also because there are certain offenses which cannot be prosecuted except upon complaint of the offended party.

★ **Do the offended parties have the right to move for the dismissal of a case?**

No. The right belongs only to the government prosecutor who is the representative of the plaintiff.

★ **Can the offended party file a civil action for certiorari in his own name if the RTC dismisses an information?**

Yes. In case of grave abuse of discretion amounting to lack of jurisdiction, the petition may be filed by the offended party because the offended party has an interest in the civil aspect of the case.

RULE 111 PROSECUTION OF CIVIL ACTION

★ **What is the general rule?**

The general rule is when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense charged under Article 100 of the RPC shall be deemed instituted with the criminal action.

★ **What are the exceptions?**

The civil action is not deemed instituted in the following cases:

1. When the offended party has waived the civil action
2. When the offended party has reserved the right to institute it separately
3. When the offended party has instituted the civil action prior to the institution of the criminal action

★ **What is the civil action that is deemed instituted with the criminal action?**

Only the civil action for the recovery of civil liability arising from the offense under Article 100 of the RPC, not the independent civil actions under Article 32, 33, 34 and 2176 of the Civil Code.

★ **What is the dual concept of civil liability?**

This means that civil liability may arise from crimes or from quasi-delicts. Thus, a negligent act causing damage may produce two kinds of civil liability – one arising from crime and another from quasi-delict. The only limitation is that the offended party may not recover twice from the same act.

★ **What are the differences between a crime and a quasi-delict?**

1. Crimes affect public interest, while quasi-delicts are only of private concern
2. The RPC punishes or corrects the criminal act, while the Civil Code merely repairs the damage by means of indemnification
3. Crimes are punished only if there is a law providing for their punishment, while quasi-delicts include all acts where fault or negligence intervenes. Therefore, quasi-delict is broader in scope.

★ **What constitutes civil liability?**

According to Article 104 of the RPC, it constitutes restitution, reparation, and indemnification for consequential damages.

★ **What is the basis for the broader concept of civil liability?**

The broader concept of civil liability means that every person criminally liable is also civilly liable. This is because in a criminal offense, there are two offended parties – the state and the private offended party.

★ **If the complaint does not contain an allegation of damages, is the offender still liable for them?**

Yes because every person criminally liable is also civilly liable. This is subject to the exception when the offended party has waived or has reserved the right to institute the civil action separately.

★ **When should the reservation be made?**

The reservation should be made before the prosecution presents its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

★ **What is the reason for the rule requiring reservation?**

The reason is to prevent double recovery from the same act or omission.

★ **Can the accused file a counterclaim in the criminal case?**

No.

★ **In a BP 22 case, can the offended party make a reservation of the civil action?**

No. The criminal action shall be deemed to include the civil action, and the offended party is not allowed to make the reservation. The actual damages and the filing fees shall be equivalent to the value of the check.

★ **When is the separate civil action suspended?**

After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the civil action was instituted, the civil action shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action.

Nonetheless, the civil action may be consolidated with the criminal action at any time before judgment on the merits upon motion of the offended party with the court trying the criminal action. The evidence presented at the civil action shall be deemed reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witness presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal actions shall be tried and decided jointly.

Exception: When there is a prejudicial question in a previously filed civil action, it should be resolved first.

★ **Are the independent civil actions also deemed suspended with the filing of the criminal action?**

No. Only the civil action arising from the crime under Article 100 is suspended. The independent civil actions are not suspended and may continue even if the criminal action has been instituted. However, the offended party may not recover twice from the same act. He should only get the bigger award.

★ **What is the effect of an acquittal on the civil action?**

The general rule is the civil action is not necessarily extinguished by the acquittal of the accused. Even if the accused is acquitted, the court can still award civil liability in the following cases:

1. When the acquittal is based on reasonable doubt
2. When there is a declaration in the decision that the liability of the accused is only civil
3. When the civil liability is not derived from or based on the criminal act of which the accused is acquitted.

However, if the decision contains a finding that the act from which the civil liability may arise does not exist, the civil liability is extinguished.

★ **Can you compel a judge by mandamus to award civil damages?**

Yes because every person criminally liable is also civilly liable and also because even if the accused is acquitted, there are cases when he is still civilly liable.

★ **What is the reason for allowing the civil liability to subsist in spite of the acquittal of the accused?**

This is because the parties in the criminal and civil action are different – in the criminal action, the party is the state, while in the civil action, the party is the private offended party. Also, the two actions required different quantum of evidence. The criminal action requires proof of guilt beyond reasonable doubt, while the civil action requires mere preponderance of evidence.

★ **What are the independent civil actions?**

The independent civil actions are those provided in Articles 32, 33, 34, and 2176 of the Civil Code. They may proceed independently of the criminal action and shall require only a preponderance of evidence.

★ What is the effect of the death of the accused on the criminal and civil actions?

If the accused dies after arraignment and during the pendency of the criminal action, both the criminal and civil liability arising from the crime shall be extinguished. However, the independent civil actions may be filed against the estate of the accused after proper substitution, and the heirs of the accused may also be substituted for the deceased.

If the accused dies before arraignment, the case shall be dismissed, without prejudice to any civil action that the offended party may file against the estate of the deceased.

★ When the defendant is absolved of civil liability in a civil action, can a criminal action still be filed against him?

Yes. While every person criminally liable is also civilly liable, the converse is not true. Therefore, even if the defendant is absolved of civil liability in a civil action, a criminal action can still be filed against him. Besides, the state is a party in a criminal action, while only the private offended party is a party in the civil action. Moreover, the quantum of evidence in the civil action is only preponderance of evidence, while that required in the criminal action is proof beyond reasonable doubt.

★ What is a prejudicial question?

A prejudicial question is one based on a fact separate and distinct from the crime but is so intimately related to it that it determines the guilt or innocence of the accused.

★ What are the elements of a prejudicial question?

1. The *previously* filed civil action involves an issue which is similar or is intimately related with an issue raised in the subsequent criminal action
2. The resolution of the issue will determine whether or not the criminal action may proceed.

★ When is an action for annulment of marriage prejudicial to a bigamy case?

An action for annulment of marriage is prejudicial to a bigamy case only if the accused in the bigamy charge is also the one asking for annulment of the second (bigamous) marriage based on vitiation of consent. This is because in such a case, if the court declares that the party's consent was indeed vitiated and annuls the marriage, then it would also mean that the party did not willingly commit the crime of bigamy. It would thus be determinative of the guilt or innocence of the accused.

RULE 112 PRELIMINARY INVESTIGATION

★ What is preliminary investigation?

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

★ When is it required?

Before a complaint or information is filed, preliminary investigation is required for all offenses punishable by imprisonment of at least 4 years, 2 months, and 1 day, regardless of the fine, except if the accused was arrested by virtue of a lawful arrest without warrant. In such a case, the complaint or information may be filed without a preliminary investigation unless the accused asks for a preliminary investigation and waives his rights under Article 125 of the RPC.

★ What is the purpose of a preliminary investigation?

1. To determine if there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.
2. To protect the accused from the inconvenience, expense, and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer.
3. To secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial.
4. To protect the state from having to conduct useless and expensive trials.

★ What is the scope of preliminary investigation?

Preliminary investigation is merely inquisitorial and it is often the only means of discovering whether the offense has been committed and the persons responsible for it to enable the fiscal to prepare his complaint or information. It is not a trial on the merits and has no purpose but to determine whether there is probable cause to believe that an offense has been committed and that the accused is probably guilty of it. It does not place the accused in jeopardy.

★ Is the right to a preliminary investigation a fundamental right?

No, it is a statutory right and may be waived expressly or by silence. It is also not an element of due process, unless it is expressly granted by law.

★ Can an accused demand the right to confront and cross-examine his witnesses during the preliminary investigation?

No. The preliminary investigation is not part of the trial. It is summary and inquisitorial in nature, and its function is not to determine the guilt of the accused but merely to determine the existence of probable cause.

★ Is the lack of a preliminary investigation a ground for dismissing a complaint?

No. The absence of a preliminary investigation does not affect the jurisdiction of the court but merely the regularity of the proceedings. The court cannot dismiss the complaint on this ground, and it should instead conduct the investigation or order the fiscal or lower court to do it.

★ What is the effect of the absence of a certification that a preliminary investigation was conducted?

It is of no consequence. What is important is that there was actually an investigation, that the accused was informed thereof and was allowed to present controverting evidence.

★ When should the right to preliminary investigation be invoked?

The accused should invoke it before plea, or else, it is deemed waived.

★ What if the court denies the invocation of the right to a preliminary investigation, what is the remedy of the accused?

He must immediately appeal it to the appellate court. He cannot later raise the issue for the first time on appeal.

★ If the complaint or information is amended, should a new preliminary investigation be conducted?

No.

★ If the complaint or information is substituted, should a new preliminary investigation be conducted?

Yes.

★ Who may conduct a preliminary investigation?

1. Provincial or city prosecutors and their assistants
2. Judges of the MTCs
3. National and Regional State Prosecutors
4. Comelec with respect to election offenses
5. Ombudsman with respect to Sandiganbayan offenses and other offenses committed by public officers
6. PCGG with respect to ill-gotten wealth cases

★ Can RTC judges conduct a preliminary investigation?

No. Although this should not be confused with the authority of the RTC to conduct an examination for the purpose of determining probable cause when issuing a warrant of arrest.

★ What is the procedure in conducting a preliminary investigation?

1. The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainants and his witnesses as well as other documents to establish probable cause. The affidavits must be subscribed and sworn before the prosecutor or government official authorized to administer oath or notary public.
2. Within 10 days from the filing of the complaint, the investigating officer shall either:
 - a. dismiss it if he finds no ground to continue the investigation; or
 - b. issue a subpoena to the respondent accompanied by the complaint and affidavits.

→ The respondent shall have the right to examine the evidence, etc, etc.

3. Within 10 days from receipt of the subpoena, the respondent shall submit his counter-affidavit, the affidavits of his witnesses, and other documents in his defense. Affidavits should also be sworn and subscribed. The respondent cannot file a motion to dismiss in lieu of a counter-affidavit.
4. If the respondent cannot be subpoenaed or if he fails to file his counter-affidavit within 10 days, the investigating officer shall resolve the complaint based on the evidence submitted by the complainant.
5. If there are facts and issues which need to be clarified, the investigating officer may set a hearing. The parties can be present, but they cannot cross-examine. The hearing shall be held within 10 days from the submission of the counter-affidavits or from the expiration of the period of their submission. It shall be terminated within 5 days.
6. Within 10 days from the termination of the investigation, the investigating officer shall determine whether or not there is probable cause to hold the respondent for trial.

★ Is a preliminary investigation a judicial proceeding?

Yes because there is an opportunity to be heard and the production and weighing of evidence upon which a decision is rendered. Since it is a judicial proceeding, the requirement of due process in judicial proceedings is also required in preliminary investigations.

★ What is the difference between criminal investigation and preliminary investigation?

Criminal investigation is a fact-finding investigation carried out by law-enforcement officers for the purpose of determining whether they should file a complaint for preliminary investigation. Preliminary investigation is conducted for the purpose of determining if there is probable cause to hold a person for trial.

★ What is probable cause?

Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

★ Is the presence of counsel in the preliminary investigation mandatory?

No. Preliminary investigation is a summary proceeding and is merely inquisitorial in nature. The accused cannot yet invoke the full exercise of his rights.

★ How does the investigating prosecutor resolve the findings after preliminary investigation?

1. If he finds probable cause to hold the respondent for trial, he shall prepare the resolution and certify under oath in the information that:
 - a. he or an authorized officer has personally examined the complainant and his witnesses;
 - b. that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof;
 - c. that the accused was informed of the complaint and of the evidence against him;
 - d. that he was given an opportunity to submit controverting evidence.
2. If he finds no probable cause, he shall recommend the dismissal of the complaint.
3. Within 5 days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor of the Ombudsman. They shall act on the resolution within 10 days from receipt and shall immediately inform the parties of such action.
4. No complaint of information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman.
5. If the investigating prosecutor recommends the dismissal of the complaint, but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or Ombudsman on the ground that probable cause exists, the latter may either:
 - a. by himself, file the information; or
 - b. direct another assistant prosecutor to file the information

without need for a new preliminary investigation.

6. The Secretary of Justice may, upon petition by a proper party or by itself, reverse or modify the resolution of the provincial or city prosecutor, the chief state prosecutor, or the ombudsman. In such a case, he shall direct the prosecutor concerned to either file the

information without need for a new preliminary investigation or to dismiss or move for its dismissal if already filed in court.

★ If there was no preliminary investigation conducted, what is the remedy of the accused?

(RICA P)

1. Refuse to enter plea
2. Insist on a preliminary investigation
3. File certiorari if refused
4. Raise it as an error on appeal
5. File a petition for prohibition

★ What should the Secretary of Justice do if an information that has already been filed in court is appealed to him?

He should, as far as practicable, refrain from entertaining the appeal. The matter should be left to the determination of the Court.

★ If the Secretary of Justice gives due course to the appeal, what should the trial judge do?

He should suspend proceedings and defer arraignment pending the resolution of the appeal.

★ Is the determination of probable cause a judicial or executive function?

It depends. If it is made in a preliminary investigation for the purpose of determining whether there is reasonable ground to believe that the accused has committed the offense and should be held for trial, it is an executive function. If it is made for the issuance of a warrant of arrest by a judge, it is a judicial function.

★ Can the accused file a motion to quash based on insufficiency of evidence?

No. He cannot pre-empt trial by filing a motion to quash on the ground of insufficiency of evidence. Whether the function of determining probable cause has been correctly discharged by the prosecutor is a matter that the trial court itself does not and may not pass upon.

★ Is the finding of a judge that probable cause exists for the purpose of issuing a warrant of arrest subject to judicial review?

No. It would be asking the court to examine and assess such evidence as has been submitted by the parties before trial and on the basis thereof, make a conclusion as whether or not it suffices to establish the guilt of the accused.

★ What is the remedy of the complainant if the Secretary of Justice does not allow the filing of a criminal complaint against the accused because of insufficiency of evidence?

He can file a civil action for damages against the offender based on Article 35 of the Civil Code. This would require a mere preponderance of evidence.

★ What are the remedies of a party against whom a warrant of arrest has been issued?

1. post bail
2. ask for reinvestigation
3. petition for review
4. motion to quash the information
5. if denied, appeal the judgment after trial

(no certiorari)

★ What is the procedure in resolving a complaint when the preliminary investigation is conducted by a judge?

1. Within 10 days after the termination of the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman for appropriate action.
2. The resolution shall state the findings of fact and law supporting his action together with the record of the case which shall include:
 - a. the warrant if the arrest is by virtue of a warrant
 - b. the affidavits, counter-affidavits, and supporting evidence
 - c. the undertaking or bail and the order of release
 - d. the transcripts of the proceedings
 - e. the order of cancellation of the bail bond if the resolution is for the dismissal of the complaint

3. Within 30 days from the receipt of the records, the provincial or city prosecutor or the Ombudsman shall review the resolution of the judge.
4. They shall act on the resolution, expressly and clearly stating the facts and the law on which it is based.
5. The parties shall be furnished with copies thereof.
6. They shall order the release of an accused who is detained if no probable cause is found against him.

★ What happens if the judge fails to resolve the case within 10 days from the termination of the investigation?

This constitutes dereliction of duty and is a ground for dismissal of the judge.

★ What is the difference between preliminary investigation conducted by the prosecutor and one conducted by the judge?

The prosecutor is not bound by the designation of the offense in the complaint. After preliminary investigation, he may file any case as warranted by the facts. The judge cannot change the charge in the complaint but must make a finding on whether or not the crime charged has been committed.

★ If the investigating judge did not issue a warrant for the arrest of the accused during the preliminary investigation, what is the remedy of the prosecutor if he believes that the accused should be immediately placed under custody?

He should file the information in court, so that the RTC may issue the warrant of arrest. He should not file for mandamus because that could take two years to resolve.

★ What is a warrant of arrest?

A warrant of arrest is a legal process issued by competent authority, directing the arrest of a person or persons upon grounds stated therein.

★ When may a warrant of arrest be issued?

By the RTC

1. Within 10 days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.
2. He may immediately dismiss the case if the evidence fails to establish probable cause.
3. If he finds probable cause, he shall issue a warrant of arrest or a commitment order if the accused has already been arrested by virtue of a warrant issued by the MTC judge who conducted the preliminary investigation or if he was arrested by virtue of a lawful arrest without warrant.
4. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within 5 days from notice and the issue must be resolved within 30 days from the filing of the complaint or information.

By the MTC

1. If the preliminary investigation was conducted by a prosecutor, same procedure as above
2. If the preliminary investigation was conducted by the MTC judge and his findings are affirmed by the prosecutor, and the corresponding information is filed, he shall issue a warrant of arrest.
3. However, without waiting for the conclusion of the investigation, he may issue a warrant of arrest if he finds after:
 - a. an examination in writing and under oath of the complainant and his witnesses
 - b. in the form of searching questions and answers that probable cause exists AND that there is a necessity of placing the accused under immediate custody in order not to frustrate the ends of justice.

★ What are the kinds of offenses that may be filed with the MTC for preliminary investigation?

1. Those which are cognizable by the RTC
2. Those cognizable by the MTC where the penalty is at least 4 years, 2 months, and 1 day regardless of the fine

★ When is a warrant of arrest not necessary?

1. When the accused is already under detention issued by the MTC
2. When the accused was arrested by virtue of a lawful arrest without warrant
3. When the penalty is a fine only

★ Are “John Doe” warrants valid?

Generally, John Doe warrants are void because they violate the constitutional provision that requires that warrants of arrest should particularly describe the person or persons to be arrested. But if there is sufficient description to identify the person to be arrested, then the warrant is valid.

★ What are the principles governing the finding of probable cause for the issuance of a warrant of arrest?

1. There is a distinction between the objective of determining probable cause by the prosecutor and by the judge. The prosecutor determines it for the purpose of filing a complaint or information, while the judge determines it for the purpose of issuing a warrant of arrest – whether there is a necessity of placing him under immediate custody in order not to frustrate the ends of justice.
2. Since their objectives are different, the judge should not rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. The judge must decide independently and must have supporting evidence other than the prosecutor's bare report.
3. It is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. He must have sufficient supporting documents upon which to make his independent judgment.

★ How should the complaint or information be filed when the accused is lawfully arrested without warrant?

The complaint or information may be filed by a prosecutor without need for a preliminary investigation provided an inquest proceeding has been conducted in accordance with existing rules. In the absence of an inquest prosecutor, the offended party or any peace officer may file the complaint directly in court on the basis of the affidavit of the offended party or peace officer.

★ What is the remedy of the person arrested without warrant if he wants a preliminary investigation?

Before the complaint or information is filed, he may ask for one provided that he signs a waiver of his rights under Article 125 of the RPC in the presence of counsel. He may still apply for bail in spite of the waiver. The investigation must be terminated within 15 days.

After the complaint of information is filed but before arraignment, the accused may, within 5 days from the time he learns of his filing, ask for a preliminary investigation.

★ What is an inquest?

An inquest is an informal and summary investigation conducted by a public prosecutor in a criminal case involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly charged in court.

★ What are the guidelines to safeguard the rights of an accused who has been arrested without a warrant?

1. The arresting officer must bring the arrestee before the inquest fiscal to determine whether the person should remain in custody and charged in court or if he should be released for lack of evidence or for further investigation.
2. The custodial investigation report shall be reduced to writing, and it should be read and adequately explained to the arrestee by his counsel in the language or dialect known to him.

★ What is the procedure in cases not requiring a preliminary investigation?

1. If filed with the prosecutor, the prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within 10 days from its filing.
2. If filed with the MTC:
 - a. If within 10 days from the filing of the complaint or information, the judge finds no probable cause after personally examining the evidence in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, he shall dismiss the complaint or information.
 - b. He may require the submission or additional evidence, within 10 days from notice. If he still finds no probable cause, he shall dismiss the case.
 - c. If he finds probable cause, he shall issue a warrant of arrest or a commitment order and hold him for trial. If he thinks that there is no necessity for placing the accused under custody, he may issue summons instead.

Bail may be in the form of:

1. corporate surety
2. property bond
3. cash deposit
4. recognizance

RULE 113 ARREST

★ What is arrest?

Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense.

★ How is an arrest made?

Arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

★ What does it mean when jurisprudence says that the officer, in making the arrest, must "stand his ground"?

It means that the officer may use such force as is reasonably necessary to effect the arrest.

★ What is the duty of the arresting officer who arrests a person?

He must deliver the person immediately to the nearest jail or police station.

★ Within what period must a warrant of arrest be served?

There is no time period. A warrant of arrest is valid until the arrest is effected or until it is lifted. The head of the office to whom the warrant was delivered must cause it to be executed within 10 days from its receipt, and the officer to whom it is assigned for execution must make a report to the judge who issued it within 10 days from the expiration of the period. If he fails to execute it, he should state the reasons therefor.

★ When is an arrest without warrant lawful?

A peace officer or private person may arrest without warrant:

1. When in his presence, the person to be arrested has committed, is actually committing, or is about to commit an offense;
2. When an offense has just been committed, and he has probable cause based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending or has escaped while being transferred from one confinement to another.

★ A police officer was chasing a person who had just committed an offense. The person went inside a house, so the police officer followed. Inside the house, the police officer saw drugs lying around. Can he confiscate the drugs? Can he use them as evidence?

Yes. The plain view doctrine is applicable in this case because there was a prior valid intrusion, the police officer inadvertently discovered the evidence, he had a right to be there, and the evidence was immediately apparent.

★ What if the officer merely peeks through the window of the house and sees the drugs – can he confiscate them? Can he use them as evidence?

He can confiscate them, without prejudice to his liability for violation of domicile. He cannot use them as evidence because the seizure cannot be justified under the plain view doctrine, there being no previous valid intrusion.

★ When should an arrest be made?

It can be made on any day and at any time of the day and night.

★ Can an officer arrest a person against whom a warrant has been issued even if he does not have the warrant with him?

Yes, but after the arrest, if the person arrested requires, it must be shown to him as soon as practicable.

SECTION 14 BAIL

★ What is bail?

Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required.

★ What are the forms of bail?

★ What is recognizance?

Recognizance is an obligation of record, entered into before a court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial.

★ When is bail a matter of right and when is it a matter of discretion?

In the MTC, it is a matter of right before or after conviction, regardless of the offense.

In the RTC, it is a matter of right before conviction, except for offenses punishable by death, reclusion perpetua, or life sentence and the evidence of guilt is strong, in which case it is discretionary. After conviction, bail is a matter of discretion regardless of the offense. The application for bail may be filed and acted upon by the trial court as long as the original record of the case has not been transmitted to the appellate court. However, if the decision of the trial court changed the nature of the offense from non-bailable to bailable, the application should be addressed and resolved by the appellate court.

★ When can the prosecution move for the cancellation or denial of bail of the accused?

If the penalty imposed by the trial court is imprisonment greater than 6 years, the prosecution may move for denial or cancellation of the bail of the accused, with notice to the accused, upon showing of the following circumstances:

1. That he is a recidivist, quasi-recidivist, habitual delinquent, or committed the offense with the aggravating circumstance of reiteracion.
2. That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification.
3. That he committed the offense while on probation, parole or conditional pardon
4. That the circumstances of his case indicate the probability of flight if released on bail; or
5. That there is undue risk that he may commit another crime during the pendency of the appeal.

★ When is a bail hearing necessary?

Bail hearing is mandatory when bail is a matter of discretion. It is incumbent upon the prosecution to show that the evidence of guilt is strong. Even if the prosecution is absent or refuses to present evidence, the court cannot grant bail without conducting a hearing. The court must first be convinced that the evidence does not warrant the denial of bail.

★ What is required of the judge who denies an application for bail?

The order should contain a summary of the evidence presented and the reason for the denial, otherwise it shall be void. This is in order to safeguard the constitutional right to presumption of innocence and also because there is a need for clear grounds before a person can be denied of his liberty.

★ If there is a likelihood that the accused would jump bail, what should the court do?

1. Increase the amount of bail
2. Require periodic reports of the accused to court
3. Warn him that the trial may proceed in absentia

★ What is a capital offense?

A capital offense is an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death.

★ What are the duties of the trial judge in case an application for bail is filed?

1. Notify the prosecutor of the hearing or require him to submit his recommendation
2. Conduct a hearing
3. Decide whether the evidence of guilt is strong based on the summary of evidence of the prosecution

- If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond. If evidence of guilt is strong, the petition should be denied.

- Judgment must be rendered upon lawful hearing.

★ **In criminal cases, what are the requirements of procedural due process?**

The requirements in criminal cases are more stringent. They are:

- The accused must have been heard by a court of competent jurisdiction;
- He must have been proceeded against under orderly processes of the law;
- He may be punished only after inquiry and investigation;
- There must be notice to the accused;
- The accused must be given an opportunity to be heard;
- Judgment must be rendered within the authority of a constitutional law.

Presumption of Innocence

★ **What is the meaning of the right of presumption of innocence?**

The right means that the presumption must be overcome by evidence of guilt beyond reasonable doubt. Guilt beyond reasonable doubt means that there is moral certainty as to the guilt of the accused. Conviction should be based on the strength of the prosecution and not on the weakness of the defense. The significance of this is that accusation is not synonymous with guilt.

★ **What are the exceptions to the constitutional presumption of innocence?**

- Presumptions – If there is a reasonable connection between the fact presumed and the fact ultimately proven from such fact

Examples:

- When an accountable public officer fails to account for funds or property that should be in his custody, he is presumed to be guilty of malversation;
 - Persons in possession of recently stolen goods are presumed guilty of the offense in connection with the goods.
- Self-Defense – One who invokes self-defense is presumed guilty. The burden of proving the elements of self-defense (unlawful aggression, reasonable necessity of the means used to prevent or repel it; lack of sufficient provocation on the part of the one defending himself) belongs to the accused.

★ **What is a “reverse trial”?**

Usually, the prosecution presents its evidence to establish the guilt of the accused first. But a reverse trial happens if the accused admits the killing but claims self-defense. He must first establish the elements of self-defense in order to overturn the presumption that he was guilty of the offense.

Right to be present at the trial

★ **What are the requisites of a valid trial in absentia?**

- The accused has already been arraigned;
- He has been duly notified of the trial
- His failure to appear at the trial is unjustifiable.

★ **Can the right to be present at the trial be waived?**

Yes, except in the following situations, where the presence of the accused at the trial is required:

- Arraignment;
- During promulgation of judgment, except if it is for a light offense;
- When the presence of the accused at the trial is necessary for purposes of identification, unless he admits beforehand that he is the same person charged.

Right to Counsel

★ **Is there a difference between the right to counsel during custodial investigation and the right to counsel during the trial?**

Yes. In custodial investigation, the right to counsel can only be waived in writing AND with the assistance of counsel. The counsel required in custodial investigation is competent and independent counsel, preferably of his own (the suspect's) choice.

During the trial, the right to counsel means the right to effective counsel.

The requirement is stricter during custodial investigation because a trial is done in public, while custodial investigation is not. The danger that confessions will be

★ **What are the guidelines in setting the amount of bail?**

- Financial ability of the accused
- Nature and circumstances of the offense
- Penalty for the offense
- Character and reputation of the accused
- Age and health of the accused
- Weight of evidence against the accused
- Probability of the accused appearing at the trial
- Forfeiture of other bail
- The fact that he was a fugitive from the law when arrested
- Pendency of other cases where the accused is on bail

★ **Where should bail be filed?**

It may be filed with the court where the case is pending. In the absence of the judge thereof, bail may be filed with any RTC or MTC judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with and RTC of said place, or if no judge is available, with any MTC judge therein.

But where bail is a matter of discretion or where the accused seeks to be released on recognizance, bail may only be filed in the court where the case is pending.

Any person in custody who is not yet charged may apply for bail with any court in the province, city or municipality where he is held.

★ **What is the remedy of the accused if he is denied bail?**

He should file a special civil action in the CA, not the SC within 60 days.

★ **Does an application for bail bar the accused from questioning the validity of his arrest, the validity of the warrant, or the manner of conducting the preliminary investigation?**

No, provided that he raises these questions before plea.

RULE 115 RIGHTS OF THE ACCUSED

★ **What are the rights of the accused in criminal prosecutions?**

- To be presumed innocent until the contrary is proved beyond reasonable doubt;
- To be informed of the nature and cause of the accusation against him;
- To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of judgment;
- To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination;
- To be exempt from being compelled to be a witness against himself;
- To confront and cross-examine the witnesses against him at the trial;
- To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;
- To have a speedy, impartial, and public trial;
- To appeal in all cases allowed and in the manner prescribed by law.

Due Process

★ **What are the two aspects of the right to due process?**

- Substantive due process – this refers to the intrinsic validity of the law
- Procedural due process – one that hears before it condemns, proceeds upon inquiry, and renders judgment only after trial and based on the evidence presented therein.

★ **Is it necessary to have trial-type proceedings in order to satisfy the requirement of due process?**

No. There is no need for trial-type proceedings in order to satisfy due process. What is important is that there was an opportunity to be heard. Notice and hearing are the minimum requirements of due process.

★ **In general, what are the requirements of procedural due process?**

- There must be an impartial and competent court with judicial power to hear and determine the matter before it;
- Jurisdiction must be lawfully acquired over the person of the defendant or over the property subject of the proceeding;
- The defendant must be given an opportunity to be heard;

extracted against the will of the defendant during custodial investigation does not really exist during trial.

During trial the purpose of counsel is not so much to protect him from being forced to confess but to defend the accused.

★ Why is the right to counsel afforded during trial?

The right to counsel is embraced in the right to be heard.

★ When should the right to counsel be invoked?

The right to counsel may be invoked at any stage of the proceedings, even on appeal. However, it can also be waived. The accused is deemed to have waived his right to counsel when he voluntarily submits himself to the jurisdiction of the Court and proceeds with his defense.

But in *US v. Escalante* and *People v. Nang Kay* (p. 532 of Herrera Textbook), the Court held that the defendant cannot raise the question of his right to have an attorney for the first time on appeal. If the question is not raised in the trial court, the prosecution may go to trial. The question will not be considered in the appellate court for the first time when the accused fails to raise it in the lower court.

★ Is the duty of the court to appoint counsel-de-officio mandatory at all times?

No. The duty to appoint counsel-de-officio is mandatory only up to arraignment.

★ Does the mistake of counsel bind the client?

As a rule, the mistake of counsel binds the client. Therefore, the client cannot question a decision on the ground that counsel was an idiot. However, an exception to this is if counsel misrepresents himself as a lawyer, and he turns out to be a fake lawyer. In this case, the accused is entitled to a new trial because his right to be represented by a member of the bar was violated. He was thus denied of his right to counsel and to due process.

★ Is the right to counsel absolute?

No. The right of choice must be reasonably exercised. The accused cannot insist on counsel that he cannot afford, one who is not a member of the bar, or one who declines for a valid reason, such as conflict of interest. Also, the right of the accused to choose counsel is subject to the right of the state to due process and to speedy and adequate justice.

★ When can the accused defend himself in person?

The accused can defend himself in person only if the court is convinced that he can properly protect his rights even without the assistance of counsel.

Right to be a Witness on His Own Behalf

★ What is the weight of the testimony of an accused who testifies on his own behalf but refuses to be cross-examined?

The testimony will not be given weight. It will not have probative value because the prosecution was not given a chance to test the credibility of the testimony through cross-examination.

Right Against Self-Incrimination

★ What is the scope of the right against self-incrimination?

The right against self-incrimination covers testimonial compulsion only and the compulsion to produce incriminating documents, papers, and chattels. It does not cover the compulsion to produce real or physical evidence using the body of the accused.

★ Is there an exception to the right against self-incrimination?

The right cannot be invoked when the State has the right to inspect documents under its police power, such as documents of corporations.

★ What is the rationale for protecting the right against self-incrimination?

There are two reasons:

1. For humanitarian reasons: To prevent the State, with all its coercive powers, from extracting testimony that may convict the accused.
2. For practical reasons: The accused is likely to commit perjury if he were compelled to testify against himself.

★ Who may invoke the right against self-incrimination, and when can they invoke the right?

1. An ordinary witness may invoke the right, but he may only do so as each incriminating question is asked.
2. The accused himself may invoke the right, and unlike the ordinary witness, he may altogether refuse to take the witness stand and refuse to answer any and all questions.

But, once the accused waives his right and chooses to testify in his own behalf, he may be cross-examined on matters covered in his direct examination. He cannot refuse to answer questions during cross-examination by claiming that the answer that he will give could incriminate him for the crime with which he was charged.

However, if the question during cross-examination relates to a crime different from that with which he was charged, he can still invoke the right and refuse to answer.

★ Can the accused or witness invoke the right against self-incrimination if he is asked about past criminality?

It depends. If he can still be prosecuted for it, questions about past criminal liability are still covered by the protection of the right against self-incrimination. But if he cannot be prosecuted for it anymore, he cannot invoke the right.

★ What are the rights of the accused in the matter of testifying or producing evidence?

1. Before the case is filed in Court but after he has been taken into custody or otherwise deprived of his liberty
 - a. the right to be informed of
 - b. his right to remain silent and to counsel
 - c. the right not to be subjected to force, violence, threat, intimidation, or any other means which vitiate free will
 - d. the right to have evidence obtained in violation of these rights rejected
2. After the case is filed in court
 - a. to refuse to be a witness
 - b. not to have any prejudice whatsoever result to him by such refusal
 - c. to testify in his own behalf subject to cross-examination by the prosecution
 - d. while testifying, to refuse to answer a specific question which tends to incriminate his for some crime *other than* that for which he is being prosecuted.

★ What are immunity statutes?

The immunity statutes are classified into two – use immunity statutes and transactional immunity statutes.

Use immunity **prohibits the use of a witness' compelled testimony and its fruits** in any manner in connection with the criminal prosecution of the witness. (*Therefore, the witness can still be prosecuted, but the compelled testimony cannot be used against him.*)

Transactional immunity **grants immunity to the witness from prosecution** for an offense to which his compelled testimony relates. (*Here, the witness cannot be prosecuted at all.*) Examples are state witnesses and those who furnish information about violations of the Internal Revenue Code, even if they themselves offered bribes to the public official.

★ What is the effect of the refusal of the accused to refuse to testify in his behalf?

As a general rule, the silence of the accused should not prejudice him.

However, in the following cases, an unfavorable inference is drawn from the failure of the accused to testify:

1. If the prosecution has already established a prima facie case, the accused must present proof to overturn the evidence of the prosecution.
2. If the defense of the accused is alibi and he does not testify, the inference is that the alibi is not believable.

★ Is DNA testing covered by the right against self-incrimination?

No (recent SC ruling).

Right of Confrontation

★ What is the meaning of the right of confrontation?

It means that the accused can only be tried using those witnesses that meet him face to face at the trial who give testimony in his presence, with the opportunity to cross-examine them.

★ **What are the reasons for the right?**

1. To allow the court to observe the demeanor of the witness while testifying.
2. To give the accused the opportunity to cross-examine the witness in order to test their recollection and credibility.

★ **Can the right of confrontation be waived?**

Yes, it can be waived either expressly or impliedly. It is waived impliedly when an accused waives his right to be present at the trial. The right of confrontation may also be waived by conduct amounting to a renunciation of the right to cross-examine. When the party was given an opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone, he is deemed to have waived the right.

★ **What happens to the testimony of a witness who dies or becomes unavailable?**

It depends. If the other party had the opportunity to cross-examine the witness before he died or became unavailable, the testimony may be used as evidence. However, if the other party did not even have the opportunity to cross-examine before the subsequent death or unavailability of the witness, the testimony will have no probative value. (*An opportunity to cross-examine is all that is necessary in order to allow the use of the testimony of the witness. There need not be an actual cross-examination, as long as there was an opportunity to do so.*)

Right to Compulsory Process

★ **What is the right to compulsory process?**

It is the right of the accused to have a subpoena and/or a subpoena duces tecum issued in his behalf in order to compel the attendance of witnesses and the production of other evidence.

★ **What happens if a witness refuses to testify when required?**

The court should order the witness to give bail or even order his arrest, if necessary. Failure to obey a subpoena amounts to contempt of court.

Right to Speedy, Public, and Impartial Trial

★ **How should the trial be conducted?**

The trial should be speedy, public, and impartial.

★ **What is the meaning of the right to speedy trial?**

The right means that the trial should be conducted according to the law of criminal procedure and the rules and regulations, free from vexations, capricious, and oppressive delays.

★ **When should the arraignment and pre-trial be held?**

According to the Speedy Trial Act and Circular 38-98, arraignment and pre-trial if the accused pleads not guilty should be held within 30 days from the date the court acquires jurisdiction of the person of the accused.

★ **Within how many days should the trial be completed?**

In no case shall the entire period exceed 180 days from the first day of trial, except as otherwise authorized by the Court Administrator.

★ **What is the remedy of an accused whose right to speedy trial is violated?**

The accused has the following remedies:

1. File a motion to dismiss on the ground of violation of his right to speedy trial. (*For purposes of double jeopardy, this has the same effect as an acquittal.*) This must be done prior to trial, or else, it is deemed a waiver of the right to dismiss.
2. File for mandamus to compel a dismissal of the information.
3. If he is restrained of his liberty, file for habeas corpus.
4. Ask for the trial of the case.

★ **What is the limitation on the right of an accused to a speedy trial?**

The limitation is that the State should not be deprived of its day in court. The right of the State/the prosecution to due process should be respected.

★ **The prosecution and the complainant fail to attend the first hearing. The court postpones the hearing to another date. Is there a violation of the right to speedy trial?**

No. The right to speedy trial is violated when there are unjustified postponements of the trial, and a long period of time is allowed to elapse without the case being tried for no justifiable reason.

★ **What is the meaning of the right to a public trial?**

It means that anyone interested in observing the manner that a judge conducts the proceedings in his courtroom may do so.

★ **Why should a trial be conducted in public?**

The trial should be public in order to prevent abuses that may be committed by the court to the prejudice of the defendant. Moreover, the accused is entitled to the moral support of his friends and relatives.

★ **Is there an exception to the requirement of publicity?**

Yes. The court may bar the public in certain cases, such as when the evidence to be presented may be offensive to decency or public morals, or in rape cases, where the purpose of some persons in attending is merely to ogle at the parties.

★ **Is it okay to hold the trial in the chambers of the judge?**

Yes. There is no violation of the right to a public trial, since the public is not excluded from attending the trial.

★ **In so-called trials by publicity, when can the publicity be considered prejudicial to the accused?**

To warrant a finding of prejudicial publicity, there must be allegations and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity.

Right to Appeal, When Allowed

★ **Is the right to appeal a fundamental right?**

No. The right to appeal is a statutory right, except in the case of the minimum appellate jurisdiction of the Supreme Court granted by the Constitution. Anyone who seeks to exercise the right to appeal must comply with the requirements of the rules.

★ **Can the right to appeal be waived?**

Yes, it can be waived expressly or impliedly.

★ **What is the effect of the flight of the accused on his right to appeal?**

When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him.

RULE 116 ARRAIGNMENT AND PLEA

★ **Where should the accused be arraigned?**

The accused must be arraigned before the court where the complaint was filed or assigned for trial.

★ **How is arraignment made?**

Arraignment is made:

1. in open court
2. by the judge or clerk
3. by furnishing the accused with a copy of the complaint or information
4. reading it in the language or dialect known to him, and
5. asking him whether he pleads guilty or not guilty.

★ **Can there be an arraignment without the presence of the accused?**

No. The accused must be present at the arraignment and must personally enter his plea.

★ **What is the effect of the refusal of the accused to enter a plea?**

If the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

★ X is charged with homicide. He pleads guilty but presents evidence to establish self-defense. What should the court do?

The court should withdraw the plea and enter a plea of not guilty.

★ When should the arraignment be held?

The general rule is that the accused should be arraigned within 30 days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

However, in the following cases, the accused should be arraigned with a shorter period:

1. Where the complainant is about to depart from the Philippines with no definite date of return, the accused should be arraigned without delay and his trial should commence within 3 days from arraignment.
2. The trial of cases under the Child Abuse Act requires that the trial should be commenced within 3 days from arraignment.
3. When the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within 3 days from the filing of the information or complaint. The accused shall be arraigned within 10 days from the date of the raffle.

★ Can the lawyer of the accused enter a plea for him?

No. The accused must personally enter his plea.

★ What is the importance of arraignment?

Arraignment is the means for bringing the accused into court and informing him of the nature and cause of the accusation against him. During arraignment, he is made fully aware of possible loss of freedom or life. He is informed why the prosecuting arm of the State is mobilized against him. It is necessary in order to fix the identity of the accused, to inform him of the charge, and to give him an opportunity to plead.

★ During the arraignment, is the judge duty-bound to point out that an information is duplicitous?

No. The judge has no obligation to point out the duplicitousness or any other defect in an information during arraignment. The obligation to move to quash a defective information belongs to the accused, whose failure to do so constitutes a waiver of the right to object.

★ X was tried for murder without having been arraigned. At the trial, X's counsel presented witnesses and cross-examined the prosecution witnesses. It was only after the case was submitted for decision that X was arraigned. X was convicted. Can X invoke the failure of the court to arraign him before trial as a ground for questioning the conviction?

No. The failure of the court to arraign X before trial was conducted did not prejudice the rights of X since he was able to present evidence and cross-examine the witnesses of the prosecution. The error was cured by the subsequent arraignment.

★ Is the accused presumed to have been arraigned in the absence of proof to the contrary?

Yes. In view of the presumption of regularity in the performance of official duties, it can be presumed that a person accused of a crime was arraigned, in the absence of proof to the contrary. However, the presumption of regularity is not applied when the penalty imposed is death. When the life of a person is at stake, the court cannot presume that there was an arraignment; it has to be sure that there was one.

★ Is the accused entitled to know in advance the names of all of the prosecution witnesses?

No. The success of the prosecution might be endangered if this right were granted to the accused. The witnesses might be subjected to pressure or coercion. The right time for the accused to know their identities is when they take the witness stand.

★ Can the prosecution call witnesses that are not listed in the information?

Yes. The prosecution may call at the trial witnesses other than those named in the complaint or information.

★ X was charged with homicide. He entered a plea of guilty. He was later allowed to testify in order to prove the mitigating circumstance of

incomplete self-defense. At the trial, he presented evidence to prove that he acted in complete self-defense. The court acquitted him. Later, X was again charged with physical injuries. X invoked double jeopardy. Can X be prosecuted again for physical injuries?

Yes. There was no double jeopardy. In order for double jeopardy to attach, there must have been a valid plea to the first offense. In this case, the presentation by X of evidence to prove complete self-defense had the effect of vacating his plea of guilt. When the plea of guilt was vacated, the court should have ordered him to plead again, or at least should have directed that a new plea of not guilty be entered for him. Because the court did not do this, at the time of the acquittal, there was actually no standing plea for X. Since there was no valid plea, there can be no double jeopardy.

★ Can a person who pleaded guilty still be acquitted?

Yes. When an accused pleads guilty, it does not necessarily follow that he will be convicted. Additional evidence independent of the guilty plea may be considered by the judge to ensure that the plea of guilt was intelligently made. The totality of evidence should determine whether the accused should be convicted or acquitted.

★ When can the accused plead guilty to a lesser offense?

At arraignment, the accused may plead guilty to a lesser offense which is necessarily included in the offense charged, provided that the offended party and the prosecutor give their consent.

After arraignment BUT BEFORE TRIAL, the accused may still be allowed to plead guilty to a lesser offense, after he withdraws his plea of not guilty. In such a case, the complaint or information need not be amended.

When the penalty imposable for the offense is at least 6 years and 1 day or a fine exceeding P12,000, the prosecutor must first submit his recommendation to the City or Provincial Prosecutor or to the Chief State Prosecutor for approval. If the recommendation is approved, the trial prosecutor may then consent to the plea of guilty to a lesser offense.

★ What should the court do when the accused pleads guilty to a capital offense?

The court should:

1. conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea.
2. require the prosecution to present evidence to prove the guilt and the precise degree of culpability of the accused for the purpose of imposing the proper penalty.
3. ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.

★ Does a plea of guilty mean an admission even of the aggravating circumstances?

Yes. A plea of guilty results in the admission of all the material facts in the complaint or information, including the aggravating circumstances. Because of this, the court should only accept a clear, definite, and unconditional plea of guilty.

★ When can the plea of guilty be considered a mitigating circumstance?

It is mitigating if made before the prosecution starts to present evidence.

★ What is the meaning of the duty of the judge to conduct a "searching inquiry"?

In all cases, the judge must convince himself: (1) that the accused is entering the plea of guilty voluntarily and intelligently; and (2) that he is truly guilty and that there exists a rational basis for a finding of guilt based on his testimony.

In addition, the judge must inform the accused of the exact length of imprisonment and the certainty that he will serve it at the national penitentiary or a penal colony. The judge must dispel any false notion that the accused may have that he will get off lightly because of his plea of guilty.

★ Is it mandatory for the prosecution to present proof of aggravating circumstances?

Yes. It is mandatory in order to establish the precise degree of culpability and the imposable penalty. Otherwise, there is an improvident plea of guilty.

★ Can a court validly convict an accused based on an improvident plea of guilty?

Yes. If there is adequate evidence of the guilt of the accused independent of the improvident plea of guilty, the court may still convict the accused. The conviction will be set aside only if the plea of guilt is the sole basis of the judgment.

★ **What should the court do when the accused pleads guilty to a non-capital offense?**

The court may receive evidence from the parties to determine the penalty to be imposed. Unlike in a plea of guilty to a capital offense, the reception of evidence in this case is not mandatory. It is merely discretionary on the court.

★ **When can the validity of a plea of guilty be attacked?**

Generally, a plea of guilty cannot be attacked if it is made voluntarily and intelligently. It can only be attacked if it was induced by threats, misrepresentation, or bribes. When the consensual character of the plea is called into question or when it is shown that the defendant was not fully apprised of its consequences, the plea can be challenged.

★ **Can an improvident plea of guilty be withdrawn as a matter of right?**

No. The withdrawal of the plea of guilty is not a matter of strict right to the accused but is within the discretion of the court. The reason for this is that trial has already commenced; withdrawal of the plea will change the theory of the case and will put all of the past proceedings to waste. Therefore, it may only be withdrawn with permission of the court.

Moreover, there is a presumption that the plea was made voluntarily. The court must decide whether the consent of the accused was, in fact, vitiated when he entered his plea.

★ **X is charged with homicide. He pleads guilty, but tells the judge "hindi ko sinasadya." Is his plea valid?**

No. In order to be valid, the plea of guilty must be unconditional. In this case, when X said "hindi ko sinasadya," he made a qualified plea of guilty. This is not a valid plea of guilty. A plea of not guilty should be entered instead.

★ **When a defendant appears without an attorney during arraignment, what should the court do?**

The court has a four-fold duty:

1. It must inform the defendant that he has a right to an attorney before being arraigned;
2. After informing him, the court must ask the defendant if he desires to have the aid of an attorney;
3. If he desires and is unable to employ an attorney, the court must assign an attorney de officio to defend him;
4. If the accused desires to procure an attorney of his own, the court must grant him a reasonable time therefor.

★ **What is the reason for this four-fold duty?**

The right to be heard would be of little avail if it does not include the right to be heard by counsel.

★ **What is the effect of the failure of the court to comply with these duties?**

It is a violation of due process.

★ **What is a counsel de officio?**

Counsel de officio is counsel appointed by the court to represent and defend the accused in case he cannot afford to employ one himself.

★ **Who can be appointed as counsel de officio?**

The court, considering the gravity of the offense and the difficulty of the questions that may arise shall appoint as counsel de officio:

1. such members of the bar in good standing
2. who by reason of their experience and ability, can competently defend the accused.

But, in localities where such members of the bar are not available, the court may appoint any person who is:

1. a resident of the province
2. and of good repute for probity and ability to defend the accused.

★ **What is the difference between the duty of the court to appoint counsel de officio during arraignment and during trial?**

During arraignment, the court has the affirmative duty to inform the accused of his right to counsel and to provide him with one in case he cannot afford it. The court must act on its own volition, unless the right is waived by the accused.

On the other hand, during trial, it is the accused who must assert his right to counsel. The court will not act unless the accused invokes his rights.

★ **Can a non-lawyer represent the accused during arraignment?**

No. During arraignment, it is the obligation of the court to ensure that the accused is represented by a lawyer because it is the first time when the accused is informed of the nature and cause of the accusation against him. This is a task which only a lawyer can do.

But during trial, there is no such duty. The accused must ask for a lawyer, or else, the right is deemed waived. He can even defend himself personally.

★ **May an accused be validly represented by a non-lawyer at the trial?**

If the accused knowingly engaged the services of the non-lawyer, he is bound by the non-lawyer's actions. But if he did not know that he was being represented by a non-lawyer, the judgment is void because of the misrepresentation.

★ **What are the duties of the public attorney if the accused assigned to him is imprisoned?**

1. He shall promptly undertake to obtain the presence of the prisoner for trial, or cause a notice to be served on the person having custody of the prisoner, requiring such person to advise the prisoner of his right to demand trial.
2. Upon receipt of that notice, the person having custody of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. If at any time thereafter, the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to be sent promptly to the public attorney.
3. Upon receipt of such notice, the public attorney shall promptly seek to obtain the presence of the prisoner for trial.
4. When the person having custody of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of the trial, the prisoner shall be made available accordingly.

★ **What is a bill of particulars?**

It is a more specific allegation. A defendant in a criminal case who believes or feels that he is not sufficiently informed of the crime with which he is charged and not in a position to defend himself properly and adequately could move for a bill or particulars or specifications.

★ **What is the purpose of a bill of particulars?**

It is to allow the accused to prepare for his defense.

★ **When can the accused move for a bill of particulars?**

The accused must move for a bill of particulars before arraignment. Otherwise, the right is deemed waived.

★ **What should be contained in the motion for a bill or particulars?**

It should specify the alleged defects of the complaint or information and the details desired.

★ **What is the right to modes of discovery?**

It is the right of the accused to move for the production or inspection or material evidence in the possession of the prosecution. It authorizes the defense to inspect, copy, or photograph any evidence of the prosecution in its possession after obtaining permission of the court.

★ **What is the purpose of this right?**

The purpose is to prevent surprise to the accused and the suppression or alteration of evidence.

★ **Is this right available during preliminary investigation?**

Yes, when indispensable to protect his constitutional right to life, liberty, and property. (*Webb v. de Leon*)

★ **What are the grounds for suspending arraignment?**

1. If the accused appears to be suffering from an unsound mental condition, which renders him unable to fully understand the charge against him and to plead intelligently thereto. The court should order his mental examination and his confinement, if necessary.
2. If there exists a prejudicial question.
3. If a petition for review of the resolution of the prosecutor is pending either at the DOJ or the Office of the President. However, the period of suspension shall not exceed 60 days counted from the filing of the petition for review.

★ **What is the test to determine whether the insanity of the accused should warrant the suspension of the proceedings?**

The test is whether the accused will have a fair trial with the assistance of counsel, in spite of his insanity. Not every aberration of the mind or exhibition of mental deficiency is sufficient to justify suspension.

RULE 117 MOTION TO QUASH

★ When can the accused file a motion to quash?

At any time before entering his plea, the accused may move to quash the complaint or information.

★ What is the form required for a motion to quash?

1. It must be in writing.
2. It must be signed by the accused or his counsel.
3. It must specify its factual and legal grounds.

★ Can the court dismiss the case based on grounds that are not alleged in the motion to quash?

As a general rule, no. The court cannot consider any ground other than those stated in the motion to quash. The exception is lack of jurisdiction over the offense charged. If this is the ground for dismissing the case, it need not be alleged in the motion to quash since it goes into the very competence of the court to pass upon the case.

★ What are the grounds that the accused may invoke to quash a complaint or information?

1. That the facts charged do not constitute an offense;
2. That the court trying the case has no jurisdiction over the offense charged;
3. That the court trying the case has no jurisdiction over the person of the accused;
4. That the officer who filed the information had no authority to do so;
5. That it does not conform substantially to the prescribed form;
6. That more than one offense is charged except when a single punishment for various offenses is prescribed by law (duplicitous);
7. That the criminal action or liability has been extinguished;
8. That it contains averments which, if true, would constitute a legal excuse or justification;
9. That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (double jeopardy)

★ X filed a motion to quash an information on the ground that he was in the US when the crime charged was committed. Should the motion be granted?

The motion should be denied. The accused is already making a defense. Matters of defense are generally not a ground for a motion to quash. They should be presented at the trial.

★ What is meant by the statement that "a motion to quash hypothetically admits allegations of fact in the information"?

It means that the accused argues that assuming that the facts charged are true, the information should still be dismissed based on the ground invoked by the defendant. Therefore, since the defendant assumes that the facts in the information are true, only these facts should be taken into account when the court resolves the motion to quash. Other facts, such as matters of defense, which are not in the information should not be considered. Exceptions to this rule are when the grounds invoked to quash the information are extinction of criminal liability, prescription, and former jeopardy. In these cases, additional facts are allowed.

★ Can the accused move to quash on the ground that he was denied due process?

No. Denial of due process is not one of the grounds for a motion to quash.

★ X filed a motion to quash on the following grounds: that the court lacked jurisdiction over the person of the accused and that the complaint charged more than one offense. Can the court grant the motion on the ground of lack of jurisdiction over the person of the accused?

No. A motion to quash on the ground of lack of jurisdiction over the person of the accused must be based only on this ground. If other grounds are included, there is a waiver, and the accused is deemed to have submitted himself to the jurisdiction of the court.

★ What is the effect of an information that was signed by an unauthorized person?

It is a VALID information signed by a competent officer which, among other requisites, confers jurisdiction over the person of the accused and the subject matter of the accusation. Thus, an infirmity in the information such as lack of authority of the officer signing it cannot be cured by silence, acquiescence, express consent, or even amendment.

★ What happens if the defendant enters his plea before filing a motion to quash?

By entering his plea before filing the motion to quash, the defendant waives FORMAL objections to the complaint or information.

But if the ground for the motion is any of the following, there is no waiver. The ground may be raised at any stage of the proceeding:

1. failure to charge an offense
2. lack of jurisdiction over the offense
3. extinction of criminal liability
4. double jeopardy

★ How is criminal liability extinguished?

Under Article 89 of the RPC, criminal liability is extinguished by:

1. death of the convict, and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
2. service of sentence;
3. amnesty;
4. absolute pardon;
5. prescription of the crime;
6. prescription of the penalty;
7. marriage of the offended woman, as provided in Article 344 of the RPC.

★ X and Y were charged with adultery. While the case was being tried, X died. What happens to the criminal liability of X and Y?

The criminal liability of X is extinguished. The criminal liability of Y subsists. The death of one of several accused will not be a cause for dismissal of the criminal action as against the other accused.

★ What is the effect of the death of the offended party on the criminal liability of the accused?

Where the offense charged in a criminal complaint or information is one against the state, involving peace and order, the death of the offended party before final conviction of the defendant will not abate the prosecution. Neither does the death of the offended party in private crimes abate the prosecution.

★ What are the means by which criminal liability is partially extinguished?

1. Conditional pardon
2. Commutation of sentence
3. For good conduct, allowances which the culprit may earn while he is serving his sentence

★ What are the distinctions between pardon and amnesty?

	AMNESTY	PARDON
TYPE OF OFFENSE	Political offenses	Infractions of the peace (common crimes)
BENEFICIARY	Classes of persons	An individual
CONCURRENCE OF CONGRESS	Necessary	Not necessary
ACCEPTANCE	Beneficiary need not accept	Need for distinct acts of acceptance on the part of the pardonee
JUDICIAL NOTICE	Courts take judicial notice because it is a public act	Courts do not take judicial notice because it is a private act of the President. Therefore, it must be proved in court.
EFFECT	Abolishes the offense (looks backward)	Relieves the offender from the consequences of the offense (looks forward)
WHEN IT MAY BE GRANTED	Before or after prosecution	Only after conviction by final judgment

★ What is the effect of absolute pardon upon criminal liability?

Absolute pardon blots out the crime. It removes all disabilities resulting from the conviction, such as the political rights of the accused.

★ What is the effect of pardon by the offended party upon criminal liability?

As a general rule, pardon by the offended party does not extinguish criminal liability. Only civil liability is extinguished by express waiver of the offended party.

However, pardon granted before the institution of the criminal proceedings in cases of adultery, concubinage, seduction, abduction, and acts of lasciviousness shall extinguish criminal liability.

★ What is the effect of marriage of the offender with the offended party in private crimes?

It shall extinguish the criminal action or remit the penalty already imposed. This applies even to co-principals, accomplices, and accessories.

However, where multiple rape is committed, marriage of the offended party with one defendant extinguishes the latter's liability and that of his accessories or accomplices for a single crime of rape cannot extend to the other acts of rape.

★ If the offender in rape is the legal husband of the offended party, how can the husband's criminal liability be extinguished?

The subsequent forgiveness by the wife shall extinguish the criminal action or the penalty. But the penalty shall not be abated if the marriage is void ab initio.

★ Why is prescription a ground for a motion to quash?

This is meant to exhort the prosecution not to delay; otherwise, they will lose the right to prosecute. It is also meant to secure the best evidence that can be obtained.

★ What are the prescriptive periods of crimes?

OFFENSE	PRESCRIPTIVE PERIOD
Punishable by death, reclusion perpetua, or reclusion temporal	20 years
Punishable by other afflictive penalties	10 years
Punishable by arresto mayor	5 years
Libel or other similar offenses	2 years
Oral defamation and slander by deed	6 months
Light offenses	2 months

★ Can the accused still raise prescription as a defense even after conviction? Can the defense of prescription be waived?

The accused can still raise prescription as a defense even after conviction. The defense cannot be waived. This is because the criminal action is totally extinguished by the expiration of the prescriptive period. The State thereby loses or waives its right to prosecute and punish it.

★ What is the proper action of the court when the accused raises the defense of prescription?

The proper action for the court is to exercise its jurisdiction and to decide the case upon the merits, holding the action to have prescribed and absolving the defendant. The court should not inhibit itself because it does not lose jurisdiction over the subject matter or the person of the accused by prescription.

★ What is the effect of prescription of the offense on the civil liability of the accused?

The extinction of the penal action does not carry with it the extinction of the civil action to enforce civil liability arising from the offense charged, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist.

★ What should the court do if the accused moves to quash the complaint or information on grounds that can be cured by amendment (ex: duplicitous)?

The court should order that the amendment be made.

★ What should the court do if the accused moves to quash on the ground that the facts charged do not constitute an offense?

The court should give the prosecution the opportunity to correct the defect by amendment. If the prosecution fails to make the amendment, or if, after it makes the amendment, the complaint or information still suffers from the same defect, the court should grant/sustain the motion to quash.

★ What is the effect if a motion to quash is sustained?

The court may order that another complaint or information be filed against the accused for the same offense, except if the ground for sustaining the motion to quash is either:

1. extinguishment of the criminal liability of the accused, or
2. double jeopardy.

The grant of a motion to quash on these two grounds is a bar to another prosecution for the same offense.

If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail.

If no order is made, or if no new information was filed within the time specified by the court, the accused, if in custody, shall be discharged.

★ What is the remedy of the accused if the court denies his motion to quash?

The accused cannot appeal an order overruling his motion to quash. This is because an order denying a motion to quash is interlocutory; it does not dispose of the case upon its merits. The accused should go to trial and raise it as an error on appeal later.

★ What are the two kinds of jeopardy?

1. No person shall be twice put in jeopardy for the **same offense**.
2. When an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the **same act**.

★ What are the requisites for the accused to raise the defense of double jeopardy?

To raise the defense of double jeopardy, the following requisites must be present:

1. a **first jeopardy** must have attached prior to the second;
2. the first jeopardy must have been **validly terminated**;
3. the **second jeopardy** must be for the **same offense** or the second offense **includes or is necessarily included** in the offense charged in the first information, or is an **attempt** or a **frustration** thereof.

★ What are the requisites for the first jeopardy to attach?

1. Valid complaint or information
2. Court of competent jurisdiction
3. Arraignment
4. Valid plea
5. The defendant was acquitted, convicted, or the case was dismissed without his express consent.

★ A crime was committed in Makati. The case was filed in Pasay. When the prosecution realized that the complaint should have been filed in Makati, it filed the case in Makati. Can the accused invoke double jeopardy?

No. The court in Pasay had no jurisdiction; therefore, the accused was in no danger of being placed in jeopardy. The first jeopardy did not validly attach.

★ For purposes of double jeopardy, when is a complaint or information valid?

A complaint or information is valid if it can support a judgment of conviction. If the complaint or information is not valid, it would violate the right of the accused to be informed of the nature and cause of the accusation against him. If he is convicted under this complaint or information, the conviction is null and void. If the conviction is null and void, there can be no first jeopardy.

★ X was charged with qualified theft. X moved to dismiss on the ground of insufficiency of the information. The case was dismissed. Subsequently, the prosecution filed a corrected information. Can X plead double jeopardy?

No. The first jeopardy did not attach because the first information was not valid.

★ X was charged with theft. During the trial, the prosecution was able to prove estafa. X was acquitted of theft. Can X be prosecuted for estafa later without placing him in double jeopardy?

Yes. For jeopardy to attach, the basis is the crime charged in the complaint or information, and not the one proved at the trial. In this case, the crime charged in the first information was theft. X was therefore placed in jeopardy of being convicted of theft. Since estafa is not an offense which is included or necessarily includes theft, X can still be prosecuted for estafa without placing him in double jeopardy.

★ The estafa case against X was dismissed, but the dismissal contained a reservation of the right to file another action. Can another estafa case be filed against X without placing him in double jeopardy?

Yes. To raise the defense of double jeopardy, the first jeopardy must have been validly terminated. This means that there must have been either a conviction or an acquittal, or an **unconditional** dismissal of the case. A provisional dismissal, such as this one, does not validly terminate the first jeopardy.

Note, however, that in the second kind of jeopardy (one act punished by a law and an ordinance), the first jeopardy can only be terminated either by conviction or acquittal, and not by dismissal of the case without the express consent of the accused.

★ X was charged with theft. On the day of the trial, the prosecution could not go to trial because important witnesses were unable to appear. Counsel for the accused moved to dismiss the case. The court dismissed the case provisionally. Subsequently, X was charged with theft again. Can X invoke double jeopardy?

No. The case was dismissed upon motion of counsel for the accused, so it was not dismissed without his express consent. Moreover, the dismissal was only provisional, which is not a valid termination of the first jeopardy. In order to validly terminate the first jeopardy, the dismissal must have been unconditional.

★ X was charged with slight physical injuries. On his motion, the case was dismissed during the trial. Another case for assault upon a person in authority was filed against him. Can X invoke double jeopardy?

No. The first jeopardy was not terminated through either conviction, acquittal, or dismissal without the express consent of X. The first case was dismissed upon motion of X himself. Therefore, he cannot invoke double jeopardy.

★ X was charged with theft. During trial, the evidence showed that the offense committed was actually estafa. What should the judge do?

The judge should order the substitution of the complaint for theft with a new one charging estafa. Upon filing of the substituted complaint, the judge should dismiss the original complaint.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense.

★ What are the requisites for a valid substitution of a complaint or information?

1. No judgment has been rendered;
2. The accused cannot be convicted of the offense charged or any other offense necessarily included in the offense charged;
3. The accused will not be placed in double jeopardy.

★ X was charged with homicide. On the first day of trial, the prosecution failed to appear. The court dismissed the case on the ground of violation of the right of the accused to speedy trial. X was later charged with murder. Can X invoke double jeopardy?

No. The first jeopardy was not validly terminated. The judge who dismissed the case on the ground of violation of the right of X to speedy trial committed grave abuse of discretion in dismissing the case after the prosecution failed to appear once. This is not a valid dismissal because it deprives the prosecution of due process. When the judge gravely abuses his discretion in dismissing a case, the dismissal is not valid. Therefore, X cannot invoke double jeopardy.

★ Distinguish between dismissal and acquittal.

Acquittal is always based on the merits. The accused is acquitted because the evidence does not show his guilt beyond reasonable doubt. Dismissal does not decide the case on the merits, nor does it determine that the accused is not guilty. Dismissals terminate the proceedings, either because the court is not a court of competent jurisdiction or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance.

★ When is a dismissal of the case, even with the express consent of the accused, equivalent to an acquittal, which would constitute a bar to a second jeopardy? When is it not a bar to a second jeopardy?

A dismissal upon motion of the accused or his counsel negates the application of double jeopardy because the motion of the accused amounts to express consent, EXCEPT:

1. if the ground is insufficiency of evidence of the prosecution (demurrer to evidence), or
2. denial of the right to speedy trial.

In these two cases, even upon motion of the accused, the dismissal amounts to an acquittal and would bar a second jeopardy.

But if the accused moves to dismiss on the following grounds, he can still be prosecuted for the same offense because he is deemed to have waived his right against a second jeopardy:

1. Lack of jurisdiction (*Why? Because if you move to dismiss on the ground of lack of jurisdiction, it means that you could not have been validly convicted by that court. You are later estopped from claiming that you were in danger of conviction.*)
2. Insufficiency of complaint or information (*Same reason. You could not have been validly convicted under that defective information, so you are estopped from claiming that there was a first jeopardy.*)

★ When will dismissal or termination of the first case not bar a second jeopardy?

The conditions when dismissal or termination will not place the accused in double jeopardy are:

1. The dismissal must be sought by the defendant personally or through his counsel; and
2. Such dismissal must not be on the merits and must not necessarily amount to an acquittal.

★ Before the prosecution could finish presenting its evidence, the accused filed a demurrer to evidence. The court granted the motion and dismissed the case on the ground of insufficiency of evidence of the prosecution. Can the accused be prosecuted for the same offense again?

Yes. There was no double jeopardy because the court exceeded its jurisdiction in dismissing the case even before the prosecution could finish presenting evidence. It denied the prosecution of its right to due process. Because of this, the dismissal is null and void and cannot constitute a proper basis for a claim of double jeopardy.

★ The prosecutor filed an information against X for homicide. Before X could be arraigned, the prosecutor withdrew the information, without notice to X. The prosecutor then filed an information against X for murder. Can X invoke double jeopardy?

No. X has not yet been arraigned under the first information. Therefore, the first jeopardy did not attach. A *nolle prosequi* or dismissal entered before the accused is placed on trial and before he pleads is not equivalent to an acquittal and does not bar a subsequent prosecution for the same offense.

★ If the accused fails to object to the motion to dismiss the case filed by the prosecution, is he deemed to have consented to the dismissal? Can he still invoke double jeopardy?

No. Silence does not mean consent to the dismissal. If the accused fails to object or acquiesces to the dismissal of the case, he can still invoke double jeopardy, since the dismissal was still without his express consent. He is deemed to have waived his right against double jeopardy if he expressly consents to the dismissal.

★ X was charged with murder. The prosecution moved to dismiss the case. Counsel for X wrote the words "No objection" at the bottom of the motion to dismiss and signed it. Can X invoke double jeopardy later on?

No. X is deemed to have expressly consented to the dismissal of the case when his counsel wrote "No objection at the bottom of the motion to dismiss. Since the case was dismissed with his express consent, X cannot invoke double jeopardy.

★ X was charged with murder. After the prosecution presented its evidence, X filed a motion to dismiss on the ground that the prosecution failed to prove that the crime was committed within the territorial jurisdiction of the court. The court dismissed the case. The prosecution appealed. Can X invoke double jeopardy?

No. X cannot invoke double jeopardy. The dismissal was upon his own motion, so it was with his express consent. Since the dismissal was with his express consent, he is deemed to have waived his right against double jeopardy. The only time when a dismissal, even upon motion of the accused, will bar a second jeopardy is if it is based either on insufficiency of evidence or denial of the right of the accused to speedy trial. These are not the grounds invoked by X, so he cannot claim double jeopardy.

★ X was charged with homicide. X moved to dismiss on the ground that the court had no jurisdiction. Believing that it had no jurisdiction, the judge dismissed the case. Since the court, in fact, had jurisdiction over the case, the prosecution filed another case in the same court. Can X invoke double jeopardy?

No. X is estopped from claiming that he was in danger of being convicted during the first case, since he had himself earlier alleged that the court had no jurisdiction.

★ **X was charged with homicide. The court, believing that it had no jurisdiction, motu proprio dismissed the case. The prosecution appealed, claiming that the court, in fact, had jurisdiction. Can X invoke double jeopardy?**

Yes. When the trial court has jurisdiction but mistakenly dismisses the complaint or information on the ground of lack of it, and the dismissal was not at the request of the accused, the dismissal is not appealable because it will place the accused in double jeopardy.

★ **X was charged with rape. X moved to dismiss on the ground that the complaint was insufficient because it did not allege lewd designs. The court dismissed the case. Later, another case for rape was filed against X. Can X invoke double jeopardy?**

No. Like the previous problem, X is estopped from claiming that he could have been convicted under the first complaint. He himself moved to dismiss on the ground that the complaint was insufficient. He cannot change his position and now claim that he was in danger of being convicted under that complaint.

★ **X was charged with murder, along with three other people. X was discharged as a state witness. Can X be prosecuted again for the same offense?**

It depends. As a general rule, an order discharging an accused as a state witness amounts to an acquittal, and he is barred from being prosecuted again for the same offense. However, if he fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge, he can be prosecuted again.

★ **Can a person accused of estafa be charged with violation of BP22 without placing him in double jeopardy?**

Yes. Where two different laws define two crimes, prior jeopardy as to one of the is no obstacle to a prosecution of the other although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other. Other examples: Illegal recruitment and estafa, illegal fishing and illegal possession of explosives, alarm and scandal and illegal discharge of firearms, brigandage and illegal possession of firearms, consented abduction and qualified seduction.

But take note of the following:

Possession of a shotgun and a revolver by the same person at the same time is only one act of possession, so there is only one violation of the law.

Conviction for smoking opium bars prosecution for illegal possession of the pipe. He cannot smoke the opium without the pipe.

Theft of 13 cows at the same time and in the same place is only one act of theft.

Conviction for less serious physical injuries bars prosecution for assault upon a person in authority.

Reckless imprudence resulting in damage to property and serious or less serious physical injuries is only one offense. If it is slight physical injuries, it can be broken down into two offenses, since a light offense cannot be complexed.

★ **X installed a jumper cable which allowed him to reduce his electricity bill. He was prosecuted for violating a municipal ordinance against unauthorized installation of the device. He was convicted. Can he still be prosecuted for theft?**

No. Under the second type of jeopardy, when an act is punished by a law and an ordinance, conviction or acquittal under once will bar a prosecution under the other. (*But remember, that there has to be either conviction or acquittal. Dismissal without the express consent of the accused is not sufficient.*)

★ **What are the exceptions to double jeopardy? When can the accused be charged with a second offense which necessarily includes the offense charged in the former complaint or information?**

The conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following circumstances:

1. the graver offense developed due to **supervening facts** arising from the same act or omission constituting the former charge;
2. the facts constituting the graver charge **became known or were discovered only after a plea** was entered in the former complaint or information;
3. the **plea of guilty to the lesser offense was made without the consent** of the prosecutor and the offended party except if the offended party fails to appear at the arraignment.

★ **What is the doctrine of supervening fact?**

If, after the first prosecution, a new fact supervenes on which the defendant may be held liable, altering the character of the crime and giving rise to a new and distinct offense, the accused cannot be said to be in second jeopardy if indicted for the new offense.

★ **X was charged with frustrated homicide. There was nothing indicated that the victim was going to die. X was arraigned. Before trial, the victim dies. Can X be charged with homicide?**

It depends. If the death of the victim can be traced to the acts of X, and the victim did not contribute to his death with his negligence, X can be charged with homicide. This is a supervening fact. But if the act of X was not the proximate cause of death, he cannot be charged with homicide.

★ **X was charged with reckless imprudence resulting in homicide and was acquitted. The heirs of the victim appealed the civil aspect of the judgment. X claims that the appeal will place him in double jeopardy. Is X correct?**

No. There was no second jeopardy. What was elevated on appeal was the *civil* aspect of the case, not the criminal aspect. The extinction of criminal liability whether by prescription or by the bar of double jeopardy does not carry with it the extinction of civil liability arising from the offense charged.

★ **X was charged with murder and was acquitted. Can the prosecution appeal the acquittal?**

No. The prosecution cannot appeal the acquittal, since it would place the accused in double jeopardy.

Even if the decision of acquittal was erroneous, the prosecution still cannot appeal the decision. It would still place the accused in double jeopardy.

★ **When can the prosecution appeal despite the dismissal or termination of the case?**

As a general rule, the dismissal or termination of the case after arraignment and plea of the defendant to a valid information shall be a bar to another prosecution for the same offense, an attempt or frustration thereof, or one included or which includes the previous offense. The exceptions are:

1. if the dismissal of the first case was made upon motion or with the express consent of the defendant, unless the grounds are insufficiency of evidence or denial of the right to speedy trial;
2. if the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and
3. the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings to determine the guilt or innocence of the accused.

★ **What is the effect of the appeal by the accused?**

If the accused appeals, he waives his right against double jeopardy. The case is thrown wide open for review and a penalty higher than that of the original conviction could be imposed upon him.

★ **What should the accused do if the court denies the motion to quash on the ground of double jeopardy?**

He should plead not guilty and reiterate his defense of former jeopardy. In case of conviction, he should appeal from the judgment, on the ground of double jeopardy.

★ **When can a case be provisionally dismissed?**

A case can only be dismissed provisionally if the accused expressly consents, and with notice to the offended party. Provisional dismissal does not place the accused in double jeopardy. But, if the accused objects to the provisional dismissal, a revival of the case would place him in double jeopardy.

★ **When does the provisional dismissal become final?**

The provisional dismissal of offenses punishable by imprisonment exceeding 6 years or a fine of any amount shall become permanent after 1 year without the case having been revived.

For offenses punishable by imprisonment of more than 6 years, the provisional dismissal shall become permanent after 2 years without the case having been revived.

After the provisional dismissal becomes final, the accused cannot be prosecuted anymore.

RULE 118 PRE-TRIAL

★ **When is pre-trial required?**

Pre-trial is mandatory in all criminal cases cognizable by the Sandiganbayan, RTC, MTCs and Municipal Circuit Trial Courts.

★ **When should it be conducted?**

After arraignment and within 30 days from the date the court acquires jurisdiction over the person of the accused.

★ **What happens during pre-trial?**

The following things are considered:

1. plea bargaining
2. stipulation of facts
3. marking for identification of evidence of the parties
4. waiver of objections to admissibility of evidence
5. modification of the order of trial if the accused admits the charge but interposes a lawful defense
6. other matters that will promote a fair and expeditious trial of the criminal and civil aspects of the case

★ **What is the form required for the pre-trial agreement?**

Any agreement or admission entered into during the pre-trial conference should be:

1. in writing
2. signed by the accused
3. signed by counsel

Otherwise, it cannot be used against the accused.

★ **What is a pre-trial order?**

It is an order issued by the court after the pre-trial conference containing:

1. a recital of the actions taken,
2. the facts stipulated, and
3. the evidence marked.

The pre-trial order binds the parties, limits the trial to matters not disposed of, and controls the course of the action during the trial, unless modified by the court to prevent manifest injustice.

★ **What is plea bargaining? Why is it encouraged?**

It is the disposition of criminal charges by agreement between the prosecution and the accused. It is encouraged because it leads to prompt and final disposition of most criminal cases. It shortens the time between charge and disposition and enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned.

★ **When is plea bargaining not allowed?**

It is not allowed under the Dangerous Drugs Act where the imposable penalty is reclusion perpetua to death.

RULE 119 TRIAL

★ **How much time does the accused have to prepare for trial?**

After he enters his plea of not guilty, the accused shall have at least 15 days to prepare for trial. The trial shall commence within 30 days from receipt of the pre-trial order.

★ **How long should the trial last?**

The entire trial period should not exceed 180 days from the first day of trial, except if authorized by the Supreme Court.

★ **What are the duties of the presiding judge under the continuous trial system?**

The judge should:

1. adhere faithfully to the session hours prescribed by laws;
2. maintain full control of the proceedings;
3. efficiently allocate and use time and court resources to avoid court delays.

★ **In which cases is the time limitation not applicable?**

1. Criminal cases covered by the Rule on Summary Procedure or those where the penalty does not exceed 6 months imprisonment or a fine of P1,000: governed by the Rules on Summary Procedure
2. When the offended party is about to depart with no definite date or return: trial shall commence within 3 days from the date of arraignment, and cannot be postponed except on grounds of illness of the accused or other grounds over which the accused has no control
3. Child abuse cases: trial shall commence within 3 days from arraignment and cannot be postponed except on grounds of illness of the accused or other grounds beyond his control
4. Violations of Dangerous Drugs Law: trial shall be finished within 3 months from filing of the information.
5. Kidnapping, Robbery in a band, Robbery against a Banking or Financial Institution, Violation of the Carnapping Act, and other heinous crimes: trial shall be finished within 60 days from the first day of trial.

★ **What are the periods that should be excluded in computing the time within which trial must commence?**

1. Any period of delay resulting from **other proceedings concerning the accused**
2. Any period resulting from the **absence or unavailability of an essential witness.**
3. Any period of delay resulting from **mental incompetence or physical inability** of the accused to stand trial.
4. If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge, had there been no previous charge. (*say what?*)
5. A reasonable period of delay when the accused is **joined for trial with a co-accused over whom the court has not acquired jurisdiction**, or as to whom the **time for trial has not run and not motion for separate trial has been granted.**
6. Any period of delay from a **continuance** granted by any court motu proprio, or on motion of either the accused or his counsel, or the prosecution, if the court granted it on the basis of finding that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

★ **What are examples of other proceedings concerning the accused which should be excluded from the computation of time?**

1. Delay resulting from an **examination of the physical and mental condition of the accused;**
2. Delay resulting from proceedings with respect to **other criminal charges** against the accused;
3. Delay resulting from **extraordinary remedies against interlocutory orders;**
4. Delay resulting from **pre-trial proceedings**, provided that the delay does not exceed 30 days;
5. Delay resulting from **orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;**
6. Delay resulting from a finding of the existence of a **prejudicial question**
7. Delay reasonably attributable to any period not to exceed 30 days during which any proceeding concerning the accused is actually **under advisement.**

★ **When is an essential witness considered absent?**

When his whereabouts are unknown or cannot be determined with due diligence.

★ **When is an essential witness considered unavailable?**

When his whereabouts are known but his presence at the trial cannot be obtained with due diligence.

★ **What are the factors for granting a continuance/postponement?**

1. Whether or not the failure to grant a continuance in the proceeding would likely make a continuation of such proceeding impossible or result in a miscarriage of justice; and
2. Whether or not the case taken as a whole is so novel, unusual, and complex, due to the number of accused or the nature of the prosecution, or that it is unreasonable to expect adequate preparation within the periods of time established therein.

No continuance shall be granted because of congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the prosecutor.

★ **Is the grant of a motion for continuance or postponement a matter of right?**

No. It is a matter of discretion on the part of the court.

★ **What are the public attorney's duties where his client is being preventively detained?**

1. He shall promptly undertake to obtain the presence of the prisoner for trial, or cause a notice to be served on the person having custody of the prisoner, requiring such person to advise the prisoner of his right to demand trial.
2. Upon receipt of that notice, the person having custody of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. It at anytime thereafter, the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to be sent promptly to the public attorney.
3. Upon receipt of such notice, the public attorney shall promptly seek to obtain the presence of the prisoner for trial.
4. When the person having custody of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of the trial, the prisoner shall be made available accordingly.

★ **If the accused is not brought to trial within the time limit required, what is the remedy?**

The accused should move to dismiss the information of the ground of denial of his right to speedy trial. He shall have the burden of proving the motion, but the prosecution shall have the burden of proving that the delay was covered by the allowed exclusions of time. If the complaint or information is dismissed, the accused can plead double jeopardy to a subsequent prosecution.

The accused must move to dismiss before actually going to trial. Otherwise, it is a waiver of the right to dismiss.

★ **What is the order of trial?**

The trial proceeds in the following order:

1. The prosecution shall present evidence to prove the charge and civil liability, if proper.
2. the accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
3. The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence, unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
4. Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.

However, when the accused admits the act or omission charged in the complaint or information, but interposes a lawful defense, there will be a reverse trial.

★ **Distinguish between a negative defense and an affirmative defense.**

A negative defense requires the prosecution to prove the guilt of the accused beyond reasonable doubt. In a negative defense, the accused claims that one of the elements of the offense charged is not present. It is incumbent upon the prosecution to prove the existence of this element. For example, in illegal possession of firearms, the accused may interpose the negative defense that he had a license to carry the firearm. He cannot be compelled by the prosecution to present the license. It is the duty of the prosecution to prove the absence of the license, which is an essential element of the offense charged.

On the other hand, in an affirmative defense, the accused admits the act or omission charged, but interposes a defense, which if proven, would exculpate him. For example, the accused admits killing the victim, but he claims that he did it in self-defense. In this case, the burden of proving the elements of self-defense belong to the accused. There will be a reverse trial in which the accused will prove the elements of self-defense. This is because the accused admits the act or omission already. The prosecution need not prove it anymore. The accused must now present evidence to justify the commission of the act.

★ **Who may examine a defense witness? Who may examine a prosecution witness?**

A defense witness may be examined by **any judge** or by any **member of the bar in good standing** designated by the judge, or before an **inferior court**.

On the other hand, a prosecution witness may only be examined before the **judge of the court where the case is pending**.

★ **If there are two or more accused, should they be tried jointly or separately?**

As a general rule, when two or more accused are jointly charged with an offense, they should also be tried jointly. However, the court, in its discretion and **upon motion of the prosecutor or any accused**, may order separate trial for one of the accused.

★ **What happens to the evidence presented in the trial of the other accused if a separate trial is granted?**

When a separate trial is demanded and granted, it is the duty of the prosecution to repeat and produce all its evidence at each and every trial, unless it had been agreed by the parties that the evidence for the prosecution would not have to be repeated at the second trial and all the accused had been present during the presentation of the evidence of the prosecution and their attorney had the opportunity to cross-examine the witnesses for the prosecution.

★ **X, a public officer, was charged with malversation of public funds in conspiracy with Y, a civilian. Should they both be tried in the Sandiganbayan?**

Yes. In case private individuals are charged as co-principals, accomplices, or accessories with public officers, they shall be tried jointly with said public officers in the proper courts which shall exercise exclusive jurisdiction over them.

★ **What is a state witness?**

A state witness is **one of two or more persons jointly charged with the commission of a crime** but who is discharged with his consent as such accused so that he may be a witness for the State.

★ **When should the application for discharge of the state witness be made?**

It should be made upon motion of the prosecution before resting its case.

★ **What is the procedure?**

1. Before resting its case, the prosecution should file a motion to discharge the accused as state witness with his consent.
2. The court will require the prosecution to present evidence and the sworn statement of the proposed state witness at a hearing in order to support the discharge.
3. The court will determine if the requisites of giving the discharge are present. Evidence adduced in support of the discharge shall automatically form part of the trial.
4. If the court is satisfied, it will discharge the state witness. The discharge is equivalent to an acquittal, unless the witness later fails or refuses to testify.
5. If the court denies the motion for discharge, his sworn statement shall be inadmissible as evidence.

★ **What are the requisites in order for a person to be discharged as a state witness?**

1. There is **absolute necessity** for the testimony of the accused whose discharge is requested;
2. There is **no direct evidence available** for the proper prosecution of the offense committed, except the testimony of the said accused;
3. The testimony of said accused **can be substantially corroborated** in its material points;
4. Said accused **does not appear to be the most guilty**;
5. Said accused **has not at any time been convicted of any offense involving moral turpitude**.

★ **Can the court grant the discharge before the prosecution has finished presenting all its evidence?**

No. The court should resolve any motion to discharge only after the prosecution has presented all of its evidence since it is at this time when the court can determine the presence of the requisites above.

Although Chua v. CA (p. 703 of Herrera) says that the prosecution is not required to present all its other evidence before an accused can be discharged. The accused may be discharged at any time before the defendants have entered upon their defense.

★ **What is the meaning of "absolute necessity" of the testimony of the proposed state witness?**

It means that there is no other evidence to establish the offense other than the testimony of the accused. For example, where an offense is committed in conspiracy **and clandestinely**, the discharge of one of the conspirators is necessary in order **to provide direct evidence** of the commission of the crime. No one else other than one of the conspirators can testify on what happened among them.

★ **What is the remedy of the prosecution if the court denies the motion to discharge?**

The State can file a petition for certiorari.

★ **What are the effects of the discharge?**

1. Evidence in support of the discharge become part of the trial. But if the court denies the motion to discharge, his sworn statement shall be inadmissible in evidence.
2. Discharge of the accused operates as an acquittal and bar to further prosecution for the same offense, EXCEPT if he fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis of the discharge. In this case, he can be prosecuted again AND his admission can be used against him.

★ **What happens if the court improperly or erroneously discharges an accused as state witness (ex. he has been convicted pala of a crime involving moral turpitude)?**

The improper discharge will not render inadmissible his testimony nor detract from his competency as a witness. It will also not invalidate his acquittal because the acquittal becomes ineffective only if he fails or refuses to testify.

★ **What happens when the original information under which an accused was discharged is later amended?**

A discharge under the original information is just as binding upon the subsequent amended information, since the amended information is just a continuation of the original.

★ **Can the other conspirators be convicted solely on the basis of the testimony of the discharged state witness?**

No. There must be other evidence to support his testimony. The testimony of a state witness comes from a polluted source and must be received with caution. It should be substantially corroborated in its material points.

As an exception however, the testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and it contains details which could not have been the result of deliberate afterthought.

★ **When can different offenses be tried jointly?**

When the offenses are founded on the same facts or form part of a series of offenses of similar character, the court has the discretion to consolidate and try them jointly.

★ **What is a demurrer to evidence?**

It is a motion to dismiss the case filed by the defense after the prosecution rests on the ground of insufficiency of the evidence of the prosecution.

★ **What are the ways by which a case may be dismissed on the basis of insufficiency of evidence of the prosecution?**

There are two ways:

1. the court may dismiss the case on its own initiative after giving the prosecution the right to be heard; or
2. upon demurrer to evidence filed by the accused with or without leave of court.

★ **How do you file a demurrer to evidence with leave of court?**

Within 5 days after the prosecution rests, the accused should file a motion for leave of court to file a demurrer to evidence. In the motion for leave of court, he should state his grounds. The prosecution shall have 5 days within which to oppose the motion.

If the leave of court is granted, the accused shall file the demurrer to evidence within 10 days from notice of the grant of leave of court. The prosecution may oppose the demurrer to evidence within 10 days from its receipt of the demurrer.

★ **What is the effect of filing the demurrer to evidence with leave of court?**

If the court grants it, the case is dismissed.

If the court denies the demurrer to evidence filed *with leave of court*, the accused may still adduce evidence in his defense.

★ **What is the effect of filing the demurrer to evidence *without* leave of court?**

If the court denies the demurrer to evidence without leave of court, the accused is deemed to have waived his right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution. This is because demurrer to evidence is not a matter of right but is discretionary on the court. You have to ask for its permission before filing it, or else you lose certain rights.

★ **What is the remedy of the accused if the demurrer to evidence is denied?**

As a general rule, there can be no appeal or certiorari from the denial of the demurrer to evidence, since it is an interlocutory order, which does not pass judgment on the merits of the case. The codal says that there is no certiorari, but J. Sabio says that if there was grave abuse of discretion, there can be certiorari.

★ **When can a case be reopened?**

At any time *before finality of judgment of conviction*, the judge may reopen the case either on his own volition or upon motion, with hearing in either case, in order to avoid a miscarriage of justice.

The proceedings should be terminated within 30 days from the order granting the reopening of the case.

RULE 120 JUDGMENT

★ **What is judgment?**

Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any.

★ **What is the form required for the judgment?**

The judgment must:

1. be written in the official language,
2. personally and directly prepared by the judge,
3. signed by him, and
4. should contain clearly and distinctly a statement of the facts and law upon which it is based.

★ **If the judge has very strong beliefs against the imposition of the death penalty, can he refuse to impose it upon an accused who is guilty of an offense punishable with death?**

No. The judge must impose the proper penalty provided for by the law, even if he is against it. If he refuses to do so, it is grave abuse of discretion amounting to lack of jurisdiction.

★ **What are the contents of the judgment?**

If the judgment is of conviction, it shall state the following:

1. the *legal qualification of the offense* constituted by the acts committed by the accused and the *aggravating and mitigating circumstances* which attended its commission;
2. the *participation of the accused*, whether as principal, accomplice, or accessory;
3. the *penalty* imposed upon the accused;
4. the *civil liability or damages*, if any, unless the enforcement of the civil liability has been reserved or waived by the offended party.

If the judgment is of acquittal, the decision shall state:

1. whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove it beyond reasonable doubt; and
2. if the act or omission from which the civil liability might arise did not exist.

★ **Is it necessary for the validity of the judgment that the decision be promulgated by the same judge who heard the case?**

No. A judgment promulgated by a judge other than the one who heard the case is valid, provided that the judge who rendered the judgment relied on the records taken during the trial as a basis for his decision.

★ **Why should the decision be in writing, setting forth the facts and the law on which it is based?**

1. To inform the parties of the reason for the decision so if any of them appeals, he can point out to the appellate court the findings of facts or the rulings on point of law with which he disagrees. Also, so that the appellate court will have something to pass judgment upon.
2. To assure the parties that in reaching the judgment, the judge did so through the process of legal reasoning.

★ **Is a verbal judgment valid?**

No. A verbal judgment is incomplete because it does not contain findings of fact, and it is not signed by the judge. It may, however, be corrected by putting it in writing and following the prescribed form. When it is put in writing, it becomes a full blown judgment.

★ **Is an erroneous judgment valid?**

Yes. Error in judgment will not invalidate a decision, so long as it conforms with the requirements of the law.

★ **Is a judgment which imposes a penalty that does not exist or one that is impossible valid?**

The judgment is void. The error goes into the very essence of the penalty and does not merely arise from the misapplication thereof.

★ **Does the judge need to designate the particular provision of law violated?**

If possible, he should. But if he fails to do so, the judgment is not void, as long as his conclusions are based on some provision of law.

★ **Can the judge impose a penalty of *reclusion perpetua* or a fine of P10,000?**

No. The judge cannot impose alternative penalties (using OR). The penalty imposed must be definite. When the judge imposes alternative penalties, giving the defendant the right to choose which one to serve, he gives discretion belonging to the court to the accused.

★ **Can the judge impose a penalty of *reclusion perpetua* and a fine of P10,000?**

Yes, because in this case, the penalty is definite (it uses AND instead of OR).

★ **What is the importance of using the proper terminology in the imposition of imprisonment penalties?**

The judge should use the proper legal terminology of the penalties since each penalty has its distinct accessory penalties and effects.

★ **What is the remedy of the offended party if the judgment fails to award civil liability?**

The offended party can appeal, go on certiorari, or file for mandamus.

★ **What constitutes civil liability arising from crime?**

Civil liability arising from crime includes actual damages, moral damages, exemplary damages, and loss of earning capacity.

★ **When may attorney's fees be awarded?**

Attorney's fees may be awarded only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded. The reason for this is that there is no attorney in a criminal case, only a public prosecutor, who is compensated by the government.

★ **What is the difference between "damage" and "damages"?**

Damage refers to the actionable loss resulting from another person's act or omission.

On the other hand, damages refer to the sum of money which can be awarded for the damage done.

★ **When are exemplary damages awarded?**

1. In criminal actions, when the crime was committed with one or more aggravating circumstances.
2. In quasi-delicts, if the defendant acted with gross negligence.
3. In contracts and quasi-contracts, if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

★ **What are the mandatory awards in case of rape cases?**

In rape cases, a civil indemnity of P50,000 is mandatory. An award of moral damages is also mandatory without need or pleading or proof.

If it is qualified rape, the mandatory civil indemnity is P75,000.

★ **What should the offended party prove do if he wants to claim actual damages or loss of earning capacity?**

The offended party must show proof of the amount of the pecuniary loss, such as receipts. However, if death results from the crime or the quasi-delict, the heirs need only to prove the fact of death in order to claim actual or compensatory damages.

★ **Is there need for proof of pecuniary loss in order that moral, nominal, temperate, liquidated, or exemplary damages may be adjudicated?**

No. Art. 2216 of the Civil Code provides that no proof is needed. The assessment of the damage depends on the discretion of the court.

★ **May damages be increased on appeal?**

Yes. An appeal opens the whole case for review by the appellate court, and this includes the award of damages.

★ **What are nominal damages?**

Nominal damages are awarded in recognition of a violation of a right of the plaintiff when no actual damage was done to him.

★ **What is the civil liability of one who is guilty of illegal possession of firearms?**

None.

★ **What is the effect of the failure of the accused to object to a complaint or information that charges more than one offense before he is arraigned?**

The court may convict him of as many offenses as are charged and proved and impose on him the penalty for each offense. The court must set out separately the findings of fact and law in each offense.

★ **When does an offense charged necessarily include the offense proved?**

An offense charged necessarily includes an offense proved when some of the essential elements or ingredients of the offense charged constitute the offense proved.

Example: Offense charged is homicide. Offense proved is physical injuries. → Some of the essential elements of homicide constitute physical injuries. Therefore, the offense charged (homicide) necessarily includes the offense proved (physical injuries).

★ **When is an offense charged necessarily included in the offense proved?**

An offense charged is necessarily included in the offense proved when the essential ingredients of the offense charged constitute or form part of the elements constituting the offense proved.

Example: Offense charged is acts of lasciviousness. Offense proved is rape. → The essential ingredients of acts of lasciviousness form part of the elements of rape. Therefore, the offense charged (acts of lasciviousness) is necessarily included in the offense proved (rape).

★ **What is the rule in case the offense charged is different from the offense proved?**

The accused can only be convicted of the lesser offense, which is included in the graver offense either proved or charged. The reason for this is that the accused can only be convicted of the offense which is both charged and proved.

Example: If the offense charged is rape and the offense proved is acts of lasciviousness, he can only be convicted of acts of lasciviousness. If the offense charged is less serious physical injuries and the offense proved is serious physical injuries, he can only be convicted of less serious physical injuries.

★ **X was charged with willful homicide. What was proved was homicide through reckless imprudence. Under which offense should X be convicted?**

X should be convicted of homicide through reckless imprudence. The offense done through negligence is lesser than the one done willfully.

★ **X was charged with rape by force and intimidation. At the trial, it was proved that X raped a mental retardate. Can X be convicted or rape of a mental retardate?**

There are conflicting decisions:

People v. Abiera says that the accused charged with rape through one mode of commission may still be convicted of the crime if the evidence shows another mode of commission, provided that the accused did not object to such evidence.

People v. Padilla says that the accused cannot be convicted of rape of a mental retardate if it is not alleged in the information.

I think *People v. Padilla* is a better ruling because to convict the accused would violate his right to be informed of the nature and cause of the accusation against him.

★ X was charged with rape. What was proved at the trial was qualified seduction. Can X be convicted of qualified seduction?

No. Although qualified seduction is a lesser offense than rape, the elements of the two are different. Qualified seduction is not included in the crime of rape. Therefore, if the court convicts him of qualified seduction, it will violate his right to be informed of the nature and cause of the accusation against him, since some elements of qualified seduction were not charged.

★ How is the judgment promulgated?

The judgment is promulgated by reading it in its entirety in the presence of the accused by any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

★ Can there be promulgation of judgment in the absence of the accused?

Judgment must be promulgated in the presence of the accused. But if the conviction is for a light offense, judgment may be promulgated in the presence of his counsel or representative. Also, if the accused fails to attend the promulgation, even if he was notified thereof, or if he jumped bail or escaped from prison, judgment may be validly promulgated in absentia.

★ What happens if only the dispositive portion of the judgment is read to the accused?

The first jeopardy will not validly terminate. The judgment must be promulgated in its entirety, not just the dispositive portion.

★ Where should judgment be promulgated if the accused is confined in a province outside of the territorial jurisdiction of the court?

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the RTC with jurisdiction over the place of confinement upon request of the court that rendered the decision. The court promulgating the judgment can also accept notices of appeal and applications for bail, unless the court that rendered the decision changed the nature of the offense from non-bailable to bailable, in which case, the application for bail can only be filed with the appellate court.

★ What happens if the accused fails to appear on the date of promulgation of judgment despite notice?

The promulgation shall be made by recording the judgment in the criminal docket and serving the accused a copy thereof at his last known address or through his counsel.

If the judgment is of conviction, the accused who fails to appear at the promulgation shall lose the remedies available to him against the judgment, and the court shall order his arrest.

Within 15 days from promulgation, the accused can surrender and file a motion for leave of court to avail of these remedies. He shall state the reason for his failure to attend the promulgation, and if he is able to justify his absence, he shall be allowed to avail of these remedies within 15 days from notice.

★ When may a judgment of conviction be modified or set aside by the court that rendered it?

A judgment of conviction may be modified or set aside by the court that rendered it:

1. upon motion of the accused, and
2. before judgment has become final or appeal has been perfected.

★ When does a judgment become final?

Except where death penalty is imposed, judgment becomes final:

1. after the lapse of time for perfecting an appeal;
2. when the sentence has been partially or totally satisfied;
3. when the accused has expressly waived in writing his right to appeal; or
4. when the accused has applied for probation.

★ X, a 16 year-old, was charged with theft. After hearing, the court found that he committed the acts charged. What should the court do?

The court should determine the imposable penalty, including the civil liability. However, instead of pronouncing a judgment of conviction, the court should automatically suspend the sentence and commit the minor to the DSWD or other institution until he reaches the age of majority. (*And on his 18th birthday, Happy Birthday, he will go straight to jail. This is so strange.*)

The exceptions to suspension of sentence in case of youthful offenders are:

1. if the offender has enjoyed a previous suspension of sentence;
2. if the offender is convicted of an offense punishable by death or life imprisonment;
3. if the offender is convicted by a military tribunal.

This does not apply if, at the time of sentencing, the offender is already of age, even if he was a minor at the time of the commission of the offense.

★ When should an adult offender apply for probation?

The offender should apply for probation after conviction within the period for perfecting an appeal.

★ Can the defendant still file for probation if he has already perfected an appeal?

An application for probation may not be filed if the defendant has already perfected an appeal from the judgment of conviction. Once the appeal is perfected, it may no longer be withdrawn to apply for probation.

★ Can the defendant still appeal if he has filed for probation?

No. The filing of an application for probation is deemed a waiver of the right to appeal.

★ Is the grant of probation a matter of right upon application by the defendant?

No. It is a mere privilege, and the grant is discretionary upon the court.

★ Can there be probation if the penalty is merely a fine?

Yes. In those cases where the penalty is a fine, and the defendant cannot pay, he has to serve subsidiary imprisonment. This is where probation or suspension of sentence becomes relevant.

★ Can the defendant appeal from an order denying the application for probation?

No.

★ What is the court mandated to do before placing an accused on probation?

The court should order a post sentence investigation to determine whether the ends of justice and the best interest of the public will be served by the grant of probation.

★ When should the court deny the application for probation?

The application should be denied if the court finds that:

1. the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
2. there is an undue risk that during the period or probation, the offender will commit another crime; or
3. probation will depreciate the seriousness of the offense committed.

★ When does the probation order take effect?

A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions, he shall serve the penalty imposed for the offense.

★ What is the effect of probation on the civil liability of the accused?

Probation does not release civil liability. However, in its discretion, the court may provide for the manner of payment by the accused of the civil liability during the period of probation.

★ What is the duration of the period of probation?

1. If the defendant was sentenced to imprisonment of not more than one year, probation shall not exceed 2 years.

2. If the term of imprisonment is more than one year, probation shall not exceed 6 years.
 3. If the penalty is only a fine and the offender is made to serve subsidiary imprisonment in case of insolvency, the period of probation shall not be less than nor be more than twice the total number of days of subsidiary imprisonment.
- Ex: Subsidiary imprisonment is 10 days. The period of probation should not be less than 10 days but not more than 20 days.

★ **Can the grant of probation be revoked?**

Yes. Probation is revocable before the final discharge of the probationer by the court for violation of any of its conditions. Once it is revoked, the court should order the arrest of the probationer so that he can serve the sentence originally imposed. The period of probation is not deducted from the penalty imposed.

★ **Upon the lapse of the period of probation, is the case against the probationer automatically terminated?**

No. After the period of probation, the court still has to order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation. Only upon the issuance of this order is the case terminated.

★ **What is the effect of the final discharge?**

It shall operate to restore the probationer to all civil rights lost or suspended as a result of his conviction. He is also fully discharged of his liability for any fine imposed as to the offense for which probation was granted.

RULE 121 NEW TRIAL OR RECONSIDERATION

★ **What is the purpose of a new trial?**

It is to temper the severity of a judgment or prevent the failure of justice.

★ **Distinguish between new trial and reconsideration.**

In a new trial, the case is opened again, after judgment, for the reception of new evidence and further proceedings. It is only proper after rendition or promulgation of judgment.

In a reconsideration, the case is not reopened for further proceeding. The court is merely asked to reconsider its findings of law in order to make them conformable to the law applicable to the case.

★ **What are the grounds for a new trial?**

1. That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial (**errors of law or irregularities**);
2. That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment (**newly discovered evidence**).
3. If the case is being heard by the CA or SC, it may determine other grounds in the exercise of its discretion.

★ **What are the grounds for reconsideration?**

Errors of law or fact in the judgment.

★ **Are the mistakes of counsel in conducting the case valid grounds for a motion for a new trial?**

No. The mistakes of counsel generally bind the client, unless he misrepresented himself as a lawyer when he was in fact a plumber (or some other occupation). A new trial may also be granted where the incompetency of the counsel is so great that the defendant is prejudiced and prevented from fairly presenting his defense and where the error of counsel is serious.

★ **What are the requisites for granting a new trial on the ground of newly discovered evidence?**

1. The evidence must have been **discovered after trial**;
2. Such evidence **could not have been discovered and produced at the trial** even with the exercise of reasonable diligence;
3. The evidence is **material**, not merely cumulative, corroborative, or impeaching;
4. The evidence **must go to the merits**, such that it would produce a different result if admitted.

★ **What is a recantation? Is it a ground for a new trial?**

It is when a prior statement is withdrawn formally and publicly by a witness.

It is not a ground for granting a new trial because it makes a mockery of the court and would place the investigation of truth at the mercy of unscrupulous witnesses. Moreover, retractions are easy to extort out of witnesses. In contrast, their previous statements are made under oath, in the presence of the judge, and with the opportunity to cross-examine. Therefore, the original testimony should be given more credence.

However, the exception to this rule is when aside from the testimony of the retracting witness, there is not other evidence to support the conviction of the accused. In this case, the retraction by the sole witness creates a doubt in the mind of the judge as to the guilt of the accused. A new trial may be granted.

But if there is other evidence independent of the retracted testimony, there can be no new trial.

★ **Distinguish between a recantation and an affidavit or desistance.**

In a recantation, a witness who previously gave a testimony subsequently declares that his statements were not true.

In an affidavit of desistance, the complainant states that he did not really intend to institute the case and that he is no longer interested in testifying or prosecuting. It is a ground for dismissing the case only if the prosecution can no longer prove the guilt of the accused beyond reasonable doubt without the testimony of the offended party.

★ **Can the accused move for a new trial if he has found evidence that would impeach the testimony given by a prosecution witness?**

No. Evidence which merely seeks to impeach the evidence upon which the conviction was based will not constitute grounds for new trial. It has to be material evidence.

★ **When is evidence considered to be material?**

It is material if there is reasonable likelihood that the testimony or evidence could have produced a different result (the accused would have been acquitted).

★ **What is the form required for a motion for new trial or motion for reconsideration?**

The motion for new trial or reconsideration should:

1. be in writing;
2. state the grounds on which it is based;
3. if based on newly discovered evidence (for new trial), be supported by affidavits of witnesses by whom such evidence is expected to be given or authenticated copies of documents to be introduced in evidence.

Notice of the motion for new trial or reconsideration should be given to the prosecutor.

★ **What is the effect of the grant of the motion for new trial?**

1. If it is based on errors of law or irregularities committed during the trial, all the proceedings and evidence affected by the error or irregularity will be set aside. The court may, in the interest of justice, allow the introduction of additional evidence. This is called **trial de novo**.
2. If it is based on newly discovered evidence, the evidence already adduced will stand. The newly discovered evidence and whatever other evidence the court will allow to be introduced shall be taken and considered together with the evidence already on record.
3. In all cases – whether the court grants new trial or reconsideration – the original judgment shall be set aside or vacated and a new judgment rendered.

★ **Why is the accused not subjected to double jeopardy when a new trial or reconsideration is granted?**

First, because it is only granted upon motion of the accused. Also, the first jeopardy is never terminated, since the original judgment is set aside and replaced with a new one.

RULE 122 APPEAL

★ **Is appeal a part of due process?**

Appeal is not a part of due process except when provided by law. If the right to appeal is granted by law, it is statutory and must be exercised in accordance with the procedure laid down by law. It is compellable by mandamus.

★ Where should the appeal be filed?

1. If the case was decided by the MTCs, the appeal should be filed with the RTC.
2. If the case was decided by the RTC, the appeal should be filed with the CA or the SC in proper cases provided by law.
3. If the case was decided by the CA, the appeal should be filed with the SC.

★ Can the prosecution appeal a judgment of acquittal?

No. A judgment of acquittal becomes final immediately after promulgation. It cannot even be the subject of certiorari. The reason for this rule is that an appeal would place the accused in double jeopardy. However, the offended party may appeal the civil aspect of the case.

★ How is appeal taken?

APPEAL TO	FROM THE DECISION OF	HOW?
RTC	MTC	File a notice of appeal with the MTC and serve a copy of the notice to the adverse party
CA	RTC in the exercise of its original jurisdiction	File a notice of appeal with the RTC and serve a copy of the notice to the adverse party
CA	RTC in the exercise of its appellate jurisdiction	File a petition for review with the CA under Rule 42
SC	RTC where the penalty imposed is reclusion perpetua or life imprisonment, OR where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the offense punishable by death, reclusion perpetua or life imprisonment	File a notice of appeal with the RTC and serve a copy of the notice to the adverse party
SC	RTC imposing the death penalty	Automatic review by the SC
SC	All other appeals, except the two cases above	Petition for review on certiorari under Rule 45
SC	Sandiganbayan	Petition for review on certiorari under Rule 45

★ A, B, C, D, and E were all charged with murder, punishable by death. A, B, and C were charged as principals. D was charged as an accomplice. E was charged as an accessory. All of them were convicted. To whom should they appeal?

A, B, and C's case will be automatically reviewed by the SC without need for notice of appeal, since the penalty imposable is death. D and E should also appeal to the SC because although the penalty imposable is not death, the offense arose out of the same occurrence that gave rise to the offense punishable by death. The reason for this rule is so that only one court will review on appeal the single case involving different defendants. This would prevent a variance or conflict in the decisions of the SC and the CA.

★ How is an appeal perfected?

An appeal is perfected by filing a notice of appeal with the court in which the judgment or order was rendered, and by serving a copy thereof upon the adverse party or his attorney within the period for perfecting an appeal.

★ Within what period must appeal be perfected?

An appeal must be perfected within 15 days from promulgation of the judgment or from notice of the final order appealed from.

★ What is the effect of the perfection of an appeal?

When an appeal has been perfected, the court a quo loses jurisdiction.

★ What is the difference between the appeal of a judgment and the appeal of an order?

The appeal from a judgment must be perfected within 15 days from **promulgation**. The appeal from an order should be perfected within 15 days from **notice** of the final order.

★ A and B were convicted of murder. Only A appealed from the conviction. Should the decision of the appellate court bind B?

It depends. If the decision of the appellate court would be beneficial to B, it should affect him. But if the decision would not benefit him, it should not bind him.

★ What is the effect of the appeal by the offended party of the civil aspect of the judgment on the criminal aspect?

Nothing.

★ Can an appeal that has already been perfected by withdrawn by the appellant?

If the records have not yet been transmitted to the appellate court, the court that rendered the judgment has the discretion to allow the appellant to withdraw the appeal. If the appeal is withdrawn, the judgment shall become final.

If the records have already been transmitted to the appellate court, only the appellate court may decide whether to grant the motion to withdraw the appeal, and only before the judgment is rendered in the case on appeal.

★ Is counsel de officio still required to represent his client on appeal?

Yes. The duty of counsel de officio does not terminate upon judgment of the case. It continues until appeal.

RULE 123 PROCEDURE IN THE MUNICIPAL TRIAL COURTS

Important stuff:

1. Preliminary conference: Before conducting the trial, the court shall call the parties to a preliminary conference during which:
 - a. a stipulation of facts may be entered into,
 - b. the propriety of allowing the accused to plead guilty to a lesser offense may be considered, and
 - c. other matters may be taken up to clarify the issues and to ensure a speedy disposition of the case.
2. Prohibited pleadings and motions:
 - a. motion to dismiss the complaint or to quash the complaint or information on the ground of lack of jurisdiction over the subject matter, or failure to refer the case to the lupon.
 - b. Motion for a bill or particulars
 - c. motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
 - d. petition for relief from judgment;
 - e. motion for extension of time to file pleading, affidavits, or any other paper;
 - f. memoranda;
 - g. petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
 - h. motion to declare the defendant in default;
 - i. dilatory motions for postponement;
 - j. reply;
 - k. third-party complaints;
 - l. interventions.

RULE 126 SEARCH AND SEIZURE

★ What is a search warrant?

It is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

★ Distinguish between a search warrant and a warrant of arrest.

SEARCH WARRANT	WARRANT OF ARREST
The applicant must show: <ol style="list-style-type: none"> 1. that the items sought are in fact seizable by virtue of being connected with criminal activity; and 2. that the items will be found in the place to be searched. 	The applicant must show: <ol style="list-style-type: none"> 1. probable cause that an offense has been committed; and 2. that the person to be arrested committed it
The judge must conduct a personal, searching examination of the applicant and his witnesses	The judge need not conduct a personal examination of the applicant and his witnesses. He may rely on the affidavits of the witnesses and the recommendation of the prosecutor.

★ Why are the requirements for the issuance of a search warrant more stringent than the requirements for the issuance of a warrant of arrest?

The violation of the right to privacy produces a humiliating effect which cannot be rectified anymore. This is why there is no other justification for a search, except a warrant. On the other hand, in a warrant of arrest, the person to be arrested can always post bail to prevent the deprivation of liberty.

★ Where should the application for search warrant be filed?

As a general rule, it should be filed with the court within whose territorial jurisdiction the crime was committed.

But for compelling reasons, it can be filed with the court within whose judicial region the offense was committed or where the warrant is to be served.

Example of this: The drug syndicate stores its drugs in Pasay. It has connections in Pasay and can easily get a tip when the police officers will file for a search warrant. To avoid the drug syndicate from getting a tip of the impending search, the police officer may apply for a search warrant in Makati (within the RTC region), stating the compelling reason.

But, if the criminal action has already been filed, the application for a search warrant can only be made in the court where the criminal action is pending.

★ **What may be the subject of a search warrant?**

Personal property, which is:

1. subject of the offense,
2. stolen or embezzled and other proceeds or fruits of the offense, or
3. used or intended to be used as the means of committing an offense.

★ **What are the requisites for issuing a search warrant?**

1. There must be **probable cause**
2. Which must be **determined personally by the judge**
3. upon **personal examination** in writing and under oath of the complainant and his witnesses in the form of **searching questions and answers on facts personally known to them**
4. the probable cause must be in connection with **one specific offense**
5. **particularly describing** the place to be searched and the items to be seized
6. the **sworn statements** together with the affidavits of the witnesses must be **attached to the record**.

★ **When is the affidavit or testimony of the witness said to be based on personal knowledge?**

The test is whether perjury could be charged against the witness.

★ **Is it necessary that the person named in the search warrant be the owner of the things to be seized?**

No. Ownership is of no consequence. What is relevant is that the property is connected to an offense.

★ **What are the requisites of the personal examination that the judge must conduct before issuing the search warrant?**

The judge must:

1. examine the witnesses personally;
2. under oath;
3. and reduced to writing in the form of searching questions and answers.

★ **What is a "scatter shot warrant"?**

It is a warrant of arrest that is issued for more than one offense. It is void, since the law requires that a warrant of arrest should only be issued in connection with one specific offense.

★ **A warrant was issued for the seizure of drugs connected with "violation of the Dangerous Drugs Law." Is the warrant valid?**

The warrant is valid. Although there are many ways of violating the Dangerous Drugs Law, it is not a scatter shot warrant since it is in connection with only one penal law.

★ **Police officers applied for a warrant to search Door #1 of an apartment complex. The court issued the warrant. When they went to the apartment complex, they realized that what they thought was Door #1 was actually Door #7. Can they search Door #7?**

No. What is controlling is what is stated in the warrant, not what the peace officers had in mind, even if they were the ones who gave the description to the court. This is to prevent abuses in the service of search warrants.

★ **Can the police officer seize anything that is not included in the warrant?**

No. Anything not included in the warrant cannot be seized EXCEPT if it is mala prohibita, in which case, the seizure can be justified under the plain view doctrine.

Even if the object was related to the crime, but it is not mentioned in the warrant nor is it mala prohibita, it still cannot be seized.

★ **Police officers went to a house to execute a search warrant. They found a pistol on the table, but the pistol was not included in the search warrant. Can they seize the pistol?**

No. It is not mala prohibita, and they have no proof that it is unlicensed.

★ **What should the police officer or court do to things seized illegally?**

Anything seized illegally must be returned to the owner unless it is mala prohibita. In this case, it should be kept in custodia legis.

★ **When should the search warrant be executed?**

If possible, it should be executed during the daytime. But in certain cases, such as when the things to be seized are mobile or are in the person of the accused, it can be served during nighttime.

★ **For how long is the search warrant valid?**

It is valid for 10 days, after which the peace officer should make a return to the judge who issued it. If the peace officer does not make a return, the judge should summon him and require him to explain why no return was made. If the return was made, the judge should determine if the peace officer issued a receipt to the occupant of the premises from which the things were taken. The judge shall also order the delivery to the court of the things seized.

★ **If the warrant was executed even before the expiration of the ten-day period, can the peace officer use the warrant again before it expires?**

No. If the purpose for which it was issued has already been carried out, the warrant cannot be used anymore. The exception is if the search was not finished within one day, the warrant can still be used the next day, provided that it is still within the 10-day period.

SUMMARY

1. The Constitution does not prohibit all kinds of searches and seizures. It only prohibits unreasonable searches and seizures.
2. A search and seizure is unreasonable if it is made without a warrant, or the warrant was invalidly issued.
3. A search and seizure without a warrant is still reasonable if conducted under the following circumstances:
 - a. Incident to a lawful arrest
 - ★ It must be made AFTER the arrest. The objective is to make sure that the life of the peace officer will not be endangered.
 - ★ It must be contemporaneous with the arrest in both time and place.
 - b. Search of moving vehicles
 - c. Consent searches
 - ★ Only the person whose right may be violated can give the consent; it is a personal right.
 - ★ The requisites are:
 - (1) The person has knowledge of his right against the search;
 - (2) He freely gives his consent in spite of such knowledge.
 - d. Objects in plain view
 - ★ Requisites:
 - (1) There must have been a prior valid intrusion, and the officer must have had a right to be at the place searched at the time of the search;
 - (2) The evidence was inadvertently discovered;
 - (3) The evidence must be immediately apparent;
 - (4) There was no need for further search.
 - e. Customs searches
 - f. Stop and Frisk/ Exigent circumstances
 - g. Emergency

