

REMEDIAL LAW CRIMINAL PROCEDURE

CRIMINAL PROCEDURE

SOURCES

1. Rules 110-127 of the Revised Rules of Court;
2. 1987 Constitution particularly those under Rights of an accused under Article III (Bill of rights);
3. Various acts passed by the legislature like B.P. Big. 127;
4. Presidential Decrees;
5. Executive Orders;
6. Decisions of the Supreme Court.

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.

In its generic sense, it describes the network of laws and rules which governs the procedural administration of criminal justice, that is, laws and court rules governing arrest, search and seizure, bail etc. (*Black's Law Dictionary*).

Criminal Law	Criminal Procedure
Substantive	Remedial
It declares what acts are punishable.	It provides how the act is to be punished.
It defines crimes, treats of their nature and provides for their punishment.	It provides for the method by which a person accused of a crime is arrested, tried or punished.

Systems of Criminal Procedure

1. **Inquisitorial system** - the detection and prosecution of crimes are left to the initiative of officials and agents of the law. The procedure is characterized by secrecy and the Judge is not limited to the evidence brought before him but could proceed with his own inquiry which is not confrontative.

2. **Accusatorial system** - the accusation is exercised by every citizen. The procedure is confrontative and the trial is publicly held and ends with the magistrate rendering the verdict.
3. **Mixed System** - It is a combination of the inquisitorial and the accusatorial system. It characterizes the criminal procedures observed in the Philippines.

Criminal Jurisdiction is the authority to hear and try a particular offense and impose the punishment for it (*People v. Mariano, G.R. No. L-40527, June 30, 1976*).

Jurisdiction over the Subject Matter	Jurisdiction over the Person of the Accused
Derived from the law. It can never be acquired solely by consent of the accused.	May be acquired by consent of the accused or by waiver of objections.
Objection that the court has no jurisdiction over the subject matter may be made at any stage of the proceeding, and the right to make such objection is never waived.	If he fails to make his objection in time, he will be deemed to have waived it.

Requisites for a valid exercise of criminal jurisdiction

1. **Jurisdiction over the subject matter** - The offense by virtue of the imposable penalty or its nature is one which the court is by law authorized to take cognizance of.
2. **Jurisdiction over the territory** - The offense must have been committed or any of its essential ingredients took place

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within the territorial jurisdiction of the court. It cannot be waived and where the place of the commission was not specifically charged, the place may be shown by evidence.

3. **Jurisdiction over the person of the accused** - The person charged with the offense must have been brought to the court's presence for trial, forcibly by warrant of arrest or upon his voluntary submission to the court.

General Rule: The question of jurisdiction may be raised at any stage of the proceedings (*Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381, 170889, August 4, 2009).

Exception: Where there has been estoppel by laches on the party who raised the question (*Tijam v. Sibonghanoy*, G.R. No. L-21450, April 15, 1968).

The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or by estoppel.

However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such as for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position that the lower court had jurisdiction (*Lozon v. NLRC*, G.R. No. 107660, January 2, 1995).

Determination of Criminal Jurisdiction

1. Determined by the allegations in the complaint or information not by the results of proof or by the trial court's appreciation of the evidence presented.
2. Determined by the nature of the offense and/or penalty attached thereto and not what may be meted out after trial.
3. Determined by the law in force at the time of the institution of the criminal action and not at the time of its commission. Once vested, it cannot be withdrawn by:
 - a. subsequent amendment or stipulation (*People vs. Chupeco*, G.R. No. 19568, Mar. 31, 1964), or;
 - b. subsequent statutory amendment of the rules of jurisdiction, UNLESS the amendatory law expressly provides

otherwise or is construed that it is intended to operate to actions pending before its amendment, in which case, the court where the action is pending is ousted of jurisdiction and the pending action will have to be transferred to the court having jurisdiction by virtue of the amendatory law (*Binay vs. Sandiganbayan*, G.R. No. 120011, October 1, 1999).

Jurisdiction based on penalty imposed

The MTC has jurisdiction over offenses punishable by imprisonment for a period of **6 years and less**.

The RTC has jurisdiction over offenses punishable by imprisonment **exceeding 6 years**.

Jurisdiction where fine is the only penalty

The MTC has jurisdiction where the fine is **4,000 pesos or less**.

The RTC has jurisdiction where the fine is more than **4,000 pesos except** in cases of criminal negligence involving damage to property which falls under the exclusive original jurisdiction of the MTC.

Jurisdiction over complex crimes

Jurisdiction over the whole complex crime is lodged with the trial court having jurisdiction to impose the maximum and most serious penalty imposable of an offense forming part of the complex crime. It must be prosecuted integrally and must not be divided into component offenses which may be made subject of multiple information brought in different courts (*Cuyos vs. Garcia*, G.R. No. L-46934, April 15, 1988).

Jurisdiction over continuing crimes

Continuing offenses are consummated in one place, yet by the nature of the offense, the violation of the law is deemed continuing (e.g. estafa and libel). As such, 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.

Jurisdiction over crimes punishable by destierro

Where the imposable penalty is **destierro**, the case falls within the exclusive jurisdiction of the **Municipal Trial Court**, considering that in the hierarchy of penalties under **Article 71** of the Revised Penal Code, **destierro** follows **arresto mayor** which involves imprisonment (*People vs. Eduarte*, G.R. No. 88232,

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February 26, 1990).

Jurisdiction over libel cases

Although punishable by *prision correccional*, the jurisdiction falls within the RTC (*People vs. MTC of Quezon City*, G.R. No. 123263, Dec. 16, 1996).

Jurisdiction over violations of dangerous drugs act

Regardless of its penalty, the jurisdiction falls within the RTC (*People vs. Morales*, G.R. No. 126623, Dec. 12, 1997).

Note: Where the offense is within its exclusive competence by reason of the penalty prescribed therefore, an inferior court shall have jurisdiction to try and decide the case irrespective of the kind and nature of the civil liability arising from the said offense

The additional penalty for HABITUAL DELINQUENCY is not considered in determining jurisdiction because such delinquency is not a crime (*Legados vs. de Guzman*, G.R. No. 35285, Feb. 20, 1989).

Criminal jurisdiction of Sandiganbayan

The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

1. Violations of RA 3019 as amended (*Anti Graft and Corrupt Practices Act*) and RA 1379 (An Act Declaring Forfeiture in favor of the state any property found to have been unlawfully acquired by Public Officer or Employee and providing for the procedure therefore, which prescribes the penalties for violation thereof.)
2. Other offenses or felonies whether simple or complexed with other crimes committed by public officials and employees mentioned in Sec 4(a) PD 1606 as amended by RA 7975 in relation to their office.

The offense is "In Relation to the Office" when:

- a. The offense is intimately connected with the office of the offender and perpetrated while he was in the performance of his official functions, or
- b. The crime cannot exist without the office, or
- c. The office is a constituent element of the crime as defined in the statute.

If the character of being "in relation to his office" is absent or is not alleged in the information, the crime committed falls within the exclusive original jurisdiction of

ordinary courts and not the Sandiganbayan.

3. Crimes mentioned in Chapter 2 Section 2 Title VII Book 2 of the Revised Penal Code i.e. Art 210: Bribery, Art 211: Indirect Bribery, Art 212: Corruption of Public Officials.

Officials under the exclusive jurisdiction of the Sandiganbayan:

1. Those expressly enumerated in PD 1606, as amended by RA 8249; Violations of RA 3019 (Anti-Graft and Corrupt Practices Act), RA 1379 and Chapter 2, Sec. 2, Title 7, Book 2, RPC.
2. Officials of the executive branch, occupying salary grade 27 and higher, specifically including:
 - a. Provincial governors, vice governors, members of the Sangguniang Panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads.
 - b. City mayors, vice-mayors, members of the Sangguniang Panlungsod, city treasurers, assessors, engineers and other city department heads.
 - c. Officials of the diplomatic service occupying the position of consul and higher.
 - d. Philippine army and air force colonels, naval captains, and all officers of higher rank.
 - e. Officers of the PNP, while occupying the position of provincial director and those holding the rank of senior superintendent or higher.
 - f. City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutors.
 - g. Presidents/directors/trustees/managers of SOCCs, state universities, or educational institutions/foundations.
3. Members of Congress and officials thereof classified as Grade 27 and up.
4. Members of the judiciary without prejudice to Constitutional provisions.
5. Chairmen and members of Constitutional Commissions without prejudice to Constitutional provisions.

Exemptions:

1. **Election Offenses** - It is the Regional Trial Court that has jurisdiction as provided for in the Omnibus Election Code even if they are committed by public officers classified as Grade 27 and higher and in relation to their offices.

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2. **Court Martial Cases** – Offenses committed by members of the Armed Forces and other persons subject to military law are cognizable by court martial if such offenses are “service connected” as expressly enumerated in RA 7055.

Jurisdiction of Family Courts

RA No. 8369 establishing the Family Court granting them exclusive original jurisdiction over child and family cases, namely:

1. Criminal cases where one or more of the accused is below 18 years of age but not less than 9 years of age or;
2. where one or more of the victim is a minor at the time of the commission of the offense.

Provided that if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence shall be suspended without need of an application pursuant to the “Child and Youth Welfare Code” or “PD 603”.

Katarungang Pambarangay (Chapter 7, Title I, Book III of the Local Government Code of 1991)

Pre-requisite to Filing of Complaint in Court

General Rule: A confrontation between the parties before the *lupon* chairman or the *pangkat ng tagapagkasundo* is needed before a complaint, petition, action or proceeding may be filed or instituted directly in court or any other government office for adjudication. The parties thereto may still go to the court either (1) when the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* or *pangkat* chairman certifies that no conciliation or settlement has been reached, or (2) when the parties repudiated the settlement.

Exceptions:

1. Where the accused is under detention;
2. Where a person has 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.

Subject Matter of Amicable Settlement

General Rule: The *lupon* shall have authority to bring parties actually residing in the same city or municipality for amicable settlement of all disputes.

Exceptions:

1. Where one party is the government, or any subdivision or instrumentality thereof;
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 one (1) year or a fine exceeding Five thousand pesos (P5,000.00);
4. Offenses where there is no private offended party;
5. Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;
6. Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;
7. Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

RULE 110: PROSECUTION OF OFFENSES

Criminal Action is one by which the State prosecutes a person for an act or omission punishable by law.

SECTION 1. INSTITUTION OF CRIMINAL ACTIONS

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 (Rule 110, Sec. 1, a).

- Preliminary investigation is REQUIRED for offenses where the penalty prescribed by law is at least 4 years, 2 months and 1 day (or Prison Correccional in its medium period) without regard to fine (Rule 112, Sec. 1 Par 2).

For all other offenses – By filing the COMPLAINT OR INFORMATION directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor.

- In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters (Rule 110, Sec 1, b).

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DOES NOT APPLY to offenses which are subject to summary procedure.

Effect of institution of the criminal action:

It interrupts the running of the period of prescription of the offense charged unless otherwise provided by special laws.

- Act No. 3326 governs the prescriptive periods of violations of special laws, or offenses other than those penalized under the Revised Penal Code.

Generally, the filing of a complaint for purposes of preliminary investigation starts the prosecution process.

However, with respect to offenses penalized by special laws, the filing of the complaint or information in court is the one that interrupts the prescriptive period and not the filing of the complaint in the proper office for purposes of conducting a preliminary investigation (*Zaldivia vs. Reyes*, G.R. No. L-102342, July 3, 1992; Sec. 2, Act No. 3326). "The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

- The **People of the Philippines** is the real offended party but since the crime is also an outrage against the offended party, he is entitled to intervene in its prosecution in cases where the civil action is impliedly instituted therein. However, when the criminal action is instituted in the name of the offended party (or not *People of the Philippines*), the defect is merely of form and may be cured at any stage of the trial.
- In the case of *Heirs of Federico C. Delgado v Luisito Q. Gonzalez* (G.R. No. 184337, August 7, 2009), the Supreme Court held that xxx **only the Solicitor General** may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the *Supreme Court and the Court of Appeals*. **Except:**
 1. When the State and the offended party are deprived of due process because the prosecution is remiss in its duty to protect the interest of the State and the offended party AND
 2. When the private offended party questions the civil aspect of a decision of a lower court.
 - It is assumed that a decision on the merits had already been rendered by the lower court and it

is the civil aspect of the case which the offended party is appealing.

Suspension of prescriptive periods of cases falling under the authority of the Lupon

Under Sec. 410(c) of the *Local Government Code of 1991*, while under mediation, conciliation, or arbitration, the prescriptive period shall be suspended from the time of the filing of complaint with the *Punong Barangay* which suspension shall not exceed 60 days. The prescriptive period shall resume upon receipt of the certificate of repudiation or certificate to file action.

Remedies of the offended party if the prosecutor refuses to file an information:

1. File an action for mandamus, in case of grave abuse of discretion;
2. Lodge a new complaint before the court having jurisdiction over the offense where there is no double jeopardy;
3. Take up the matter with the Secretary of Justice in accordance with the Revised Administrative Code or with the President in special cases;
4. Institute administrative charges against the erring prosecutor;
5. File criminal action against the prosecutor under Art. 208 of RPC for negligence to prosecute or tolerance of the crime;
6. File civil action for damages under Art. 27 of the New Civil Code for failure to render service by a public officer;
7. Ask for a special prosecutor. (*Hoey vs. Prov. Fiscal of Rizal*, G.R. No. L-61323-24, June 29, 1984)

May Injunction Issue to Restrain Criminal Prosecution?

General Rule: No. Criminal prosecutions may NOT be restrained or stayed by injunction, preliminary or final. The reason being, public interest requires that criminal acts be immediately investigated and prosecuted for the protection of the society. (*Domingo vs. Sandiganbayan*, G.R. No. 103276, April 14, 1995).

Exceptions:

1. To afford adequate protection to the constitutional rights of the accused. (*Hernandez vs. Albano*, G.R. No. L-19272, Jan. 25, 1967).
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions.

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- (*Hernandez vs. Albano, supra.*);
3. When there is a prejudicial question which is *subjudice*;
 4. When the acts of the officer are without or in excess of authority (*Planas vs. Gil, G.R. No. L-46440, January 18, 1939*);
 5. When the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty, G.R. No. L-10951, February 14, 1916*);
 6. When double jeopardy is clearly apparent;
 7. When the court had no jurisdiction over the offense (*Lopez vs. City Judge, G.R. No. L-25795, Oct. 29, 1966*);
 8. When it is a case of persecution rather than prosecution;
 9. When 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 (*Salonga vs. Pano, G.R. No. L-59524, Feb. 18, 1985*); and
 11. Prevent the threatened unlawful arrest of petitioners (*Brocka vs. Enrile, G.R. Nos. 69863-65, December 10, 1990*).

SECTION 2. FORM OF THE COMPLAINT OR INFORMATION

Common Requisites as to the Form of Complaint and of Information:

1. In writing;
2. In the name of the People of the Philippines; and
3. Against all persons who appear to be responsible for the offense involved.

SECTION 3. COMPLAINT DEFINED

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

- The complaint as defined under *Section 3* is different from the complaint filed with the Prosecutor's Office. The complaint mentioned in this section refers to one filed *in court for the commencement of a criminal prosecution* for violation of a crime, usually cognizable by municipal trial courts as well as to a complaint filed by an offended party in private crimes or those which cannot be prosecuted *de officio*.

Requisites of a Complaint:

1. It must be in writing and under oath;
2. It must be in the name of the People of the Philippines;

3. It must charge a person with an offense; and
4. It must be subscribed by the offended party, by any peace officer or public officer charged with the enforcement of the law violated.

Note: 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 (*People v. Historillo, G.R. No. 130408, June 16, 2000*).

The COMPLAINT FILED WITH THE PROSECUTOR'S OFFICE, from which the latter may initiate a preliminary investigation, refers to:

1. Any written complaint;
2. Filed by an offended party or not;
3. Not necessarily under oath, **except** in 2 instances:
 - a. Complaint for commission of an offense which cannot be prosecuted *de officio* or is private in nature
 - b. Where the law requires that it is to be started by a complaint sworn to by the offended party, or when it pertains to those which need to be enforced by specified public officers.

Persons who can file a complaint:

1. Offended party;
2. Any peace officer;
3. Other public officer charged with the enforcement of the law violated (e.g. *Internal Revenue Officer for violation of the NIRC, custom agents with respect to violations of the Tariff and Customs Code*).

Complaint	Information
Subscribed by the offended party, any peace officer or other officer charged with the enforcement of the law violated.	Subscribed by the fiscal (Indispensable requirement)
It may be filed either in court or in the prosecutor's office.	It is filed with the court.
It must be made under oath.	It need not be under oath. The fiscal who files it is already acting under his oath of office.
It usually refers to private crimes.	It usually refers to public crimes.

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Under the Rule on Summary Procedure:

A complaint may be directly filed in the MTC, provided that in Metro Manila and in chartered cities, the criminal action may only be commenced by the filing of information, which means, only by the prosecutor, **except** when the offense cannot be prosecuted *de officio* as in private crimes.

SECTION 4. INFORMATION DEFINED

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

Requisites:

1. It must be in writing;
2. It must charge a person with an offense;
3. It must be subscribed by the fiscal; and
4. It must be filed in court.

Persons authorized to file information:

1. City or provincial prosecutor and their assistants; and
2. Duly appointed special prosecutors.

Note: Prosecution in the RTC is always commenced by information, **except:**

- In certain crimes against chastity (concubinage, adultery, seduction, abduction, acts of lasciviousness); and
- Defamations imputing any of the aforesaid offenses wherein a sworn written complaint is required in accordance with *Section 5 of this Rule*.
- In case of variance between the complaint filed by the offended party and the information in crimes against chastity, the complaint controls (*People vs. Oso*, G.R. No. L-42571, October 10, 1935).
- An information not properly signed cannot be cured by silence, acquiescence or even by express consent (*Villa vs. Ibanez*, G.R. No. L-4313, March 20, 1951).

SECTION 5. WHO MUST PROSECUTE CRIMINAL ACTIONS

Full discretion and control of the prosecutor

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor.

Note: The institution of a criminal action depends upon the sound discretion of the fiscal. But once the case is already filed in court, the same can no longer be withdrawn or dismissed without the court's approval. Should the fiscal find it proper to conduct a

reinvestigation of the case at such stage, the permission of the Court must be secured (*Crespo vs. Mogul*, G.R. No. 1-53373, June 30, 1987).

Conditions for a private prosecutor to prosecute a criminal action

1. The public prosecutor has a heavy work schedule, or there is no public prosecutor assigned in the province or city;
 2. The private prosecutor is authorized in writing by the Chief of the Prosecutor Office or the Regional State Prosecutor (RSP);
 3. The authority of the private prosecutor must be approved by the court;
 4. The private prosecutor shall continue to prosecute the case until the end of the trial unless the authority is withdrawn or otherwise revoked (*A.M. No. 02-2-07-SC*, effective May 1, 2002);
 5. In case of the withdrawal or revocation of the authority of the private prosecutor, the same must be approved by court (*Memo Circ. No. 25*, April 26, 2002, *Regarding Amendment to Sec. 5, Rule 110*).
- In appeals before the CA and the SC, it is only the Solicitor General that is authorized to bring and defend actions in behalf of the People of the Philippines (*People vs. Nano*, G.R. No. 94639, 13 January 1992).
 - In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the SC, the Office of the Ombudsman, through its Special Prosecutor shall represent the People of the Philippines, **except** in cases filed pursuant to E.O. Nos. 1, 2, 14 and 14-A, issued in 1986. (*Sec. 4, RA 8249*).

- In government service-related cases, the prosecution of cases cognizable by the Sandiganbayan shall be under the exclusive control and supervision of the Office of the Ombudsman. In cases cognizable by the regular courts, the law recognizes a concurrence of jurisdiction between the Office of the Ombudsman and other investigative agencies of government in the prosecution of said cases (*Uy vs. Sandiganbayan*, G.R. Nos. 105965-70, March 20, 2001).

Matters falling within the control and discretion of the prosecution:

1. What case to file (*People vs. Pineda*, G.R. No. L-26222, July 21, 1967);

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2. Whom to prosecute. (*People vs. Devaras*, G.R. Nos. 100938-39, Dec. 15, 1993);
3. Manner of prosecution. (*People vs. Nazareno*, G.R. No. 103964, Aug. 01, 1996);
4. Right to withdraw information before arraignment even without notice and hearing. (*Galvez vs. CA*, G.R. No. 114046, October 24, 1994).

Matters within the control of the court after case is filed:

1. Suspension of Arraignment (*Crespo vs. Mogul*, G.R. No. 1-53373, June 30, 1987);
2. Reinvestigation. (*Velasquez vs. Tuquero*, G.R. No. 88442, Feb. 15, 1990);
3. Prosecution by Fiscal (*Sta. Rosa Mining Co. vs. Zabala*, G.R. No. L-44723, Aug. 31, 1997);
4. Dismissal of the case (*Dungog vs. CA*, G.R. Nos. 77850-51, Mar. 25, 1988);
5. Downgrading of offense or dropping of accused even before plea (*Rule 110, Sec. 14*)

Limitations on control by court:

1. Prosecution is entitled to notice of hearing (*Republic vs. Judge Sunga*, G.R. No. 38634, June 20, 1988);
2. Court must await result for petition for review (*Marcelo vs. CA*, G.R. No. 106695, 4 August 1994);
3. Prosecution's stand to maintain prosecution should be respected by the court (*People vs. Montesa*, G.R. No. 114202, Sept. 29, 1995);
4. The court must make its own independent assessment of evidence in granting or dismissing motion to dismiss. Otherwise, judgment is void (*Martinez vs. CA*, G.R. No. 112387, October 13, 1994).

Private Crimes are those which cannot be prosecuted **except** upon complaint filed by the offended party. This legal requirement was imposed out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial.

Prosecution of Private Crimes

Who may prosecute:

1. **Concubinage and adultery** – only by the offended spouse who should have the *status, capacity, and legal representation* at the time of filing of the complaint, regardless of age:
- When complainant had already been divorced, he can no longer file the

complaint (*Pilapil vs. Somera*, G.R. No. 80116, June 30, 1989). This is considered as lack of status.;

- Both guilty parties must be included in the complaint;
- The offended party did not consent to the offense nor pardoned the offenders.

2. **Seduction, Abduction and Acts of Lasciviousness** – prosecuted exclusively and successively by the following persons in this order:

- a. By the offended woman;
- b. By the parents, grandparents or legal/judicial guardians in that successive order, if the offended party is incompetent or incapable of doing so;
- c. By the State pursuant to the DOCTRINE OF PARENS PATRIAE, when the offended party dies or becomes incapacitated before she could file the complaint and she has no known parents, grandparents or guardian.

3. **Defamation imputing to a person any of the foregoing crimes** of concubinage, adultery, seduction, abduction or acts of lasciviousness can be prosecuted only by the party or parties defamed (*Article 360, last par., Revised Penal Code*).

- If the offended party is of legal age and does not suffer from physical or mental disability, she alone can file the complaint to the exclusion of all.

Prosecution of a private crime complexed with a public offense

In complex crimes where one of the component offenses is a private crime and the other a public offense, the fiscal may initiate the proceedings *de officio*. The reason therefore is that since one of the component offenses is a public crime, the latter should prevail, public interest being always paramount to private interest.

Who can give pardon:

1. **Concubinage and adultery** – only the offended spouse, not otherwise incapacitated, can validly extend the pardon or consent contemplated therein.
2. **Seduction, abduction, and acts of lasciviousness** –
 - a. The offended minor, if with sufficient

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discretion, can validly pardon the accused by herself if she has no parents or where the accused is her own father and her mother is dead;

- b. The parents, grandparents or guardian of the offended minor, in that order, CANNOT extend a valid pardon in said crimes WITHOUT the conformity of the offended party, even if the latter is a minor;
- c. If the offended woman is of age and not otherwise incapacitated, only she can extend a valid pardon.

Note: The pardon refers to a pardon BEFORE the filing of the criminal complaint in court. Pardon effected after the filing of the complaint in court does NOT prohibit the continuance of the prosecution of the offense **except** in case of marriage between the offender and the offended party.

- The pardon in cases of seduction, abduction, and acts of lasciviousness must be express.

Pardon	Consent
Refers to past acts.	Refers to future acts.
In order to absolve the accused from liability must be extended to both offenders.	In order to absolve the accused from liability, it is sufficient even if granted only to the offending spouse.

The SUBSEQUENT MARRIAGE between the offended party and the accused extinguishes the criminal liability of the latter, together with that of the co-principals, accomplices and accessories.

Except:

1. Where the marriage was invalid or contracted in bad faith in order to escape criminal liability;
2. In "private libel," or the libelous imputation to the complainant of the commission of the crimes of concubinage, adultery, seduction, abduction, rape or acts of lasciviousness, and in slander by deed;
3. In multiple rape, insofar as the other accused in the other acts of rape respectively committed by them are concerned.

Note: The acquittal or death of one of the accused in the crime of adultery does not bar the prosecution of the other accused (*People vs. Topiño, et al.*, G.R. No. 11895, December 20, 1916).

- However, the death of the offended spouse before the filing of the complaint for adultery bars further prosecution, BUT if the offended spouse died after the filing of the corresponding complaint, his death will NOT prevent the proceeding from continuing to its ultimate conclusion because the participation of the offended party in private crimes is essential not for the maintenance of the action but solely for the initiation thereof.

Note: Desistance of the complainant does not bar criminal prosecution but it operates as a waiver of the right to pursue civil indemnity.

- An offended party in a criminal case has sufficient personality to file a special civil action for certiorari, in proper cases, even without the *imprimatur* of the State. In so doing, the complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in the name of the said complainant (*Perez vs. Hagonoy Rural Bank, Inc.*, G.R. No. 126210, Mar. 09, 2000).

SECTION 6. SUFFICIENCY OF COMPLAINT OR INFORMATION

Contents of a valid complaint or information:

1. Name and surname of the accused, or any appellation or nickname by which he is known or has been known;
2. The designation of the offense;
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 where the offense was committed.

Purpose of the rule:

1. To inform the accused of the nature and cause of accusation against him;
2. To notify the defendant of the criminal acts imputed to him so that he can duly prepare his defense.

General Rule: A defective information cannot support a judgment of conviction.

Exception: When the defect in the information was cured by evidence during the trial and no objection appears to have been raised (*Abunado v. People*, G.R. No. 159218, March 30, 2004).

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- The non-inclusion of some of the names of the eyewitnesses in the information does not preclude the prosecutor from presenting them during trial (*People vs. Dela Cruz, G.R. No. 137967, April 19, 2001*).

SECTION 7. NAME OF THE ACCUSED

Purpose: To make a specific identification of the person to whom the commission of an offense is being imputed so that the court may acquire jurisdiction over his person and to inform him of the facts.

Rules in stating the name of the accused:

1. If NAME IS KNOWN, the name and surname of the accused or any appellation or nickname by which he has been or is known must be stated;
2. If NAME CANNOT BE ASCERTAINED, a fictitious name with a statement that his true name is unknown;
3. If the true name thereafter ascertained, such name shall be inserted in the complaint or information or record;
4. While one or more persons, along with specified and named accused, may be sued as "John Does", an information against all accused described as "John Does" is void, and an arrest warrant against them is also void.

Note: An error in the name of the accused is reversible as long as his identity is sufficiently established. This defect is curable at any stage of the proceedings as insertion of the real name of the accused is merely a matter of form (*People vs. Padica, G.R. No. 102645, Apr. 07, 1993*).

SECTION 8. DESIGNATION OF THE OFFENSE

The information or complaint must state or designate the following whenever possible:

1. The designation of the offense given by the statute, if there is no designation of the offense; reference shall be made to the section of the statute punishing it;
2. The statement of the acts or omissions constituting the offense, in ordinary, concise and particular words;
3. The specific qualifying and aggravating circumstances must be stated in ordinary and concise language.

Note: The qualifying and aggravating circumstances cannot be appreciated even if proved UNLESS alleged in the information (*People vs. Perreras, G.R. No. 139622, 31*

July 2001).

- In case of allegation of aggravating circumstance of HABITUAL DELINQUENCY, it should not be generally averred. The information must specify the requisite information regarding:
 1. The commission of the previous crimes;
 2. The last conviction or release;
 3. The other previous conviction or release of the accused.
- In rape cases, the concurrence of the minority of the victim and her relationship with the offender is a special qualifying circumstance which should be both alleged and proved with certainty in order to warrant the imposition of the (maximum) penalty.

Allegations prevail over the designation of the offense in the information

- It is not the designation of the offense in the complaint or information that is controlling (*People vs. Samillano, G.R. No. L-31375, April 22, 1974*); the facts alleged therein and not its title determine the nature of the crime (*People vs. Magdowa, G.R. No. L-48457 December 13, 1941*).
- The accused may be convicted of a crime more serious than that named in the title or preliminary part if such crime is covered by the facts alleged in the body of the information and its commission is established by evidence (*Buhal vs. Court of Appeals, G.R. No. 119601, Dec. 17, 1996*).
- An accused cannot be convicted under one act when he is charged with a violation of another if the change from one statute to the other involves:
 - a. A change in the theory of the trial;
 - b. Requires of the defendant a different defense; or
 - c. Surprises the accused in any way.

SECTION 9. CAUSE OF THE ACCUSATION

Purpose:

1. To enable the court to pronounce proper judgment;
2. To furnish the accused with such a description of the charge as to enable him to make a defense;
3. As a protection against further prosecution for the same cause.

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General Rule: An accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of his constitutional right (*People v. Lopez*, G.R. Nos. 135671-72, November 29, 2000).

It is fundamental that every element of which the offense is composed must be alleged in the information, i.e. important facts and circumstances must be determined, for if the facts alleged do not constitute an offense within the terms and meaning of the law upon which the accusation is based, or if the facts alleged may all be true and yet constitute no offense, the indictment is insufficient.

Exception: Accused's failure to object is considered a *waiver* of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will (*People v. Lopez*, G.R. Nos. 135671-72, November 29, 2000).

Rule on Negative Averments

General Rule: Where the statute alleged to have been violated prohibits generally acts therein defined and is intended to apply to all persons indiscriminately, but prescribes certain limitation or exceptions from its violation, the complaint or information is sufficient if it alleges facts which the offender did as constituting a violation of law, without explicitly negating the exception, as the exception is a matter of defense which the accused has to prove.

Simply put, when an exception or negative allegation is not an ingredient of the offense and is a matter of defense, it need not be alleged.

Exception: Where the statute alleged to have been violated applies only to specific classes of persons and special conditions and the exemptions from its violation are so incorporated in the language defining the crime that the ingredients of the offense cannot be accurately and clearly set forth if the exemption is omitted, then the indictment must show that the accused does not fall within the exemptions (*For examples, see Book of Agpalo in Criminal Procedure*, 2004 ed. p. 59-

60).

Complex Crimes

Where what is alleged in the information is a complex crime and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the offense proven.

SECTION 10. PLACE OF COMMISSION OF THE OFFENSE

Purpose: To show territorial jurisdiction.

General Rule: A complaint or information is sufficient if it appears from the allegations that the offense was committed or some of its essential ingredients occurred at some place, within the jurisdiction of the court.

Exception: When the place of commission is an essential element of the offense, the place of commission must be alleged with particularity (*E.g. Trespass to dwelling, destructive arson, robbery in an inhabited house, violation of domicile, penalty on the keeper, watchman, visitor of opium den, and violation of election law*).

SECTION 11. DATE OF COMMISSION OF THE OFFENSE

General Rule: It is NOT required that the complaint or information state with particularity the DATE of the commission of the crime. It suffices that the allegation approximates or be as near the actual date when the offense was committed.

Exception: If the DATE of the commission of the offense constitutes an essential element of the offense (*E.g. Infanticide, Abortion, Bigamy, Violation of Sunday Statute (Election Law)*).

The remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a **Motion for Bill of Particulars under Rule 116 Sec. 10**. The failure to move for specification from the squashing of the information on any of the grounds provided for in the Rules deprives the accused of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms but which sufficiently charges the accused with a definite crime. Besides, the exact date of the commission of the crime is not an essential element of the crime (*People vs. Elpedes*, G.R. No. 137106-07, 2001).

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SECTION 12. NAME OF THE OFFENDED PARTY

General Rule: The offended party must be designated by name and surname or any other appellation or nickname by which he has been or is known.

Exception: In crimes against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the particular offense charged.

SECTION 13. DUPLICITY OF OFFENSE

Duplicity of Offense in information or complaint means the joinder of 2 or more SEPARATE and DISTINCT or DIFFERENT offenses in one and the same information or complaint.

The FILING of a MOTION to QUASH is the remedy in case of duplicity of offense in an information.

Purpose: The State should not heap upon the defendant two or more charges which might confuse him in his defense.

General Rule: A complaint or information must charge only one offense.

Exceptions:

1. Complex crimes;
2. Special Complex crimes;
3. Continuous crimes or *delicto continuado*;
4. Crimes susceptible of being committed in various modes;
5. Crimes of which another offense is an ingredient;
6. Single act that violates two or more distinct statutes.

Note: The test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not (*Blockburger v. United States*, 284 U.S. 299 [1932]).

Requisites of Continuous Crime:

1. Plurality of acts performed separately during a period of time;
2. Unity of penal provision infringed upon or violated;
3. Unity of criminal intent which means that two or more violations of the same penal provision are united on one and the same intent leading to the perpetration of the same criminal purpose or claim (*People vs. Ledesma*, G.R. No. L-41522,

September 29, 1976).

Principle of Absorption

Acts committed in furtherance of rebellion though crimes in themselves are deemed absorbed in the single crime of rebellion. The test is whether or not the act was done in furtherance of a political end. The political motive of the act should be conclusively demonstrated (*Enrile vs. Salazar*, G.R. No. 92163, June 05, 1990).

Mala in se felonies cannot absorb *mala prohibita* crimes (*Loney v. People*, G.R. No. 152644, February 10, 2006).

Waiver

Should there be duplicity of offense in the information, the accused must move for the quashal of the same BEFORE ARRAIGNMENT. Otherwise, he is deemed to have waived the objection and may be found guilty of as many offenses as those charged and proved during the trial.

Splitting of case not allowed

On the other hand, a defendant should not be harassed with various prosecutions based upon the same act by splitting the same into various charges, all emanating from the same law violated when the prosecution could easily and well embody them in a single information.

SECTION 14. AMENDMENT OR SUBSTITUTION

Kinds of amendment:

1. **Before the plea** – The general rule is that any amendment, formal or substantial, before the accused enters his plea may be done without leave of court.

Exception: Any amendment before plea, which downgrades the nature of the offense charged or excludes any accused from the complaint or information, can be made only

- a. Upon motion by the prosecutor;
- b. With notice to the offended party; and
- c. With LEAVE OF COURT

2. **After the plea** covers only formal amendment provided:
 - a. Leave of court is obtained;
 - b. Such amendment is not prejudicial to the rights of the accused.

Except: When a fact supervenes which changes the nature of the crime charged

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in the information or upgrades it to a higher crime, in which case, amendment as to substance may be made but there is a need for another arraignment of the accused under the amended information.

An amendment is only in form:

1. Where it neither affects nor alters the nature of the offense charged; OR
2. Where the charge does not deprive the accused of a fair opportunity to present his defense; OR
3. Where it does not involve a change in the basic theory of the prosecution.

AN AMENDMENT IS AN AMENDMENT IN SUBSTANCE where it covers matters involving the recital of facts constituting the offense charged and determinative of the jurisdiction of the court (*Almeda vs. Villaluz*, G.R. No. L-31665, August 6, 1975).

Substitution

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, provided the accused shall not be placed in double jeopardy.

Test for propriety of amendment after plea:

The test as to whether a defendant is prejudiced by the amendment of an information has been said to be:

1. when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made; and,
2. when any evidence the accused might have, would be inapplicable to the complaint or information as amended (*People vs. Montenegro*, G.R. No. L-45772, Mar. 25, 1988).

Section 14 applies only to original case and not to appealed case.

Limitation to the rule on substitution:

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

Amendment	Substitution of Information or Complaint
May involve either formal or substantial changes.	Involves substantial change from the original charge.
Amendment before the plea has been entered can be effected <i>without leave of court</i> .	Substitution of information must be <i>with leave of court</i> as the original information has to be dismissed.
Amendment is only as to form, there is NO need for another preliminary investigation and the retaking of the plea of the accused.	Another preliminary investigation is entailed and the accused has to plead anew to the new information.
An amended information refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge, hence substantial amendments to the information after the plea has been taken cannot be made over the objection of the accused, for if the original information would be withdrawn, the accused could invoke double jeopardy.	Requires or presupposes that the new information involves a different offense which does not include or is not necessarily included in the original charge; hence the accused cannot claim double jeopardy.

Variance between Allegation and Proof (situations contemplated)

1. When the offense proved is less serious than, and is necessarily included in, the offense charged, in which case the defendant shall be convicted of the offense proved;
2. When the offense proved is more serious than and includes the offense charged, in which case the defendant shall be convicted of the offense charged;
3. When the offense proved is neither included in, nor does it include, the offense charged and is different therefrom, in which case the court should dismiss the action and order the filing of new information charging the proper offense.

Note: The third situation set forth above is substitution of information under Section 14, Rule 110.

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SECTION 15. PLACE WHERE ACTION IS TO BE INSTITUTED

Purpose: The purpose being not to compel the defendant to move to, and appear in a different court from that of the territory where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place

Venue is Jurisdictional as the court has no jurisdiction to try an offense committed outside its territorial jurisdiction. *It cannot be waived, or changed by agreement of the parties, or by the consent of the defendant.*

General Rule: Subject to existing laws, in all criminal prosecutions, the action must be instituted and tried in the courts of the municipality or territory where the offense was committed or any of its essential ingredients occurred (*Sec 15(a), Rule 110*). (**Principle of Territoriality**)

Exceptions:

1. **Felonies under Art. 2 of the Revised Penal Code** – Shall be cognizable by the proper court where the criminal action was first filed (*Section 15(d), Rule 110*);
2. Where an offense is **committed on a railroad train, in an aircraft, or in any other public or private vehicle in the course of its trip** – The criminal action may be instituted and tried in the court of any municipality or territory where such train, aircraft or other vehicle passed during such trip, including the place of departure and arrival (*Section 15(b), Rule 110*);
3. Where an offense is **committed on board a vessel in the course of its voyage** – The criminal action may be instituted and tried in the proper court of the first port of entry or of any municipality or territory through which the vessel passed during such voyage subject to the generally accepted principles of international law (*Section 15(c), Rule 110*);
4. **Piracy** – The venue of piracy, unlike all other crimes, has no territorial limits. It may be tried anywhere (*People vs. Lo-Ilo, G.R. No. 17958, February 27, 1922*);
5. **Libel** – The action may be instituted at the election of the offended or suing party in

the province or city:

- a. Where the libelous article is printed and first published;
 - b. If one of the offended parties is a private individual, where said private individual actually resides at the time of the commission of the offense;
 - c. If the offended party is a public official, where the latter holds office at the time of the commission of the offense.
6. **In exceptional circumstances** – To ensure a fair trial and impartial inquiry. The SC shall have the power to order a change of venue or place of trial to avoid miscarriage of justice (*Section 5[4], Article VIII, 1987 Constitution*);
7. **In cases filed under B.P. 22** – The criminal action shall be filed in the place where the check was dishonored or issued. In case of a crossed-check, in the place of the depository or collecting bank.

SECTION 16. INTERVENTION OF THE OFFENDED PARTY IN CRIMINAL ACTION

General Rule: The offended party has the right to intervene by counsel in the prosecution of the criminal action, where the civil action for recovery of civil liability is instituted in the criminal action pursuant to *Rule 111*.

Exceptions:

1. Where from the nature of the crime and the law defining and punishing it, NO civil liability arises in favor of the offended party;
2. Where the offended party has waived his right to civil indemnity;
3. Where the ~~offended party~~ has expressly reserved his right to institute a separate civil action, OR
4. Where the ~~offended party~~ has already instituted said action.

RULE 111: PROSECUTION OF CIVIL ACTIONS

SECTION 1. INSTITUTION OF CRIMINAL AND CIVIL ACTIONS

General Rule: When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense shall be deemed instituted with the criminal action (*Sec 1(a), Rule 111*).

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Exceptions:

1. When the offended party **WAIVES** the civil action;
2. When the offended party **RESERVES** his right to institute a separate civil action;
3. When the offended party **INSTITUTES A CIVIL ACTION PRIOR** to the criminal action.

When reservation shall be made:

1. Before the prosecution starts to present its evidence; and
2. Under circumstances affording the offended party a reasonable opportunity to make such reservation.

Purpose: The same is intended to prevent double recovery (*Yakult Philippines vs. CA*, G.R. No. 91856, Oct. 05, 1990).

Instances where reservation to file the civil action separately shall NOT be allowed:

1. BP 22 cases (*Rule 111, Sec. 1 par. b*);
2. Cases cognizable by the Sandiganbayan. (*Sec. 4 of PD 1606 as amended by RA 8249*);
3. Tax cases. (*Sec. 7 par. b no.1, RA 9282*).

Note: ONLY the civil liability arising from the crime charged (*cause of action arising from delict*) as a felony is now deemed instituted.

- Civil liability arising from other sources of obligations (*law, contract, quasi-contract and quasi delict*) are no longer deemed instituted like those under *Article 32, 33, 34 and 2176* of the Civil Code. Thus, in all such cases, the prosecution of civil action may be made independently, even without reservation.
- The appearance of the offended party in the criminal case through a private prosecutor may not per se be considered either as an implied election to have his claim for damages determined in said proceedings or a waiver of his right to have it determined separately (*Sarmiento, Jr. v. Court of Appeals*, G.R. No. 122502, December 27, 2002).
- If the judgment did not provide for the award of civil damages, the judge may be compelled by **MANDAMUS** (*Lontoc vs. Jarantilla*, G.R. No. 80194, March 21, 1989).

Rules on Filing Fees of Civil Action deemed instituted with the Criminal Action:

1. NO filing fees are required for amounts of

ACTUAL DAMAGES, **except** with respect to criminal actions for violation of *BP 22*, in which case, the offended party shall pay in full the filing fees based on the face value of the check as the actual damages;

2. If damages, other than actual (*moral, exemplary and other damages*), are **SPECIFIED** in the complaint or information, the corresponding filing fees shall be paid;
3. Where moral, exemplary and other damages are **NOT SPECIFIED** in the complaint or information (*the grant and amount thereof are left to the sound discretion of the trial court*), the corresponding filing fees need not be paid and shall simply constitute a **first lien** on the judgment awarding such damages.

Note: Counterclaims, cross-claims, third party complaints are **NOT** allowed in a criminal proceeding. Any claim which could have been the subject thereof may be litigated in a separate civil action.

Reasons:

1. The counterclaim of the accused will unnecessarily complicate and confuse the criminal proceedings;
 2. The trial court should confine itself to the criminal aspect and the possible civil liability of the accused arising out of the crime.
- In an appeal of a criminal case, the appellate court may impose additional damages or increase or decrease the amounts of damages upon the accused-appellant. **HOWEVER**, additional penalties cannot be imposed upon a co-accused who did not appeal, but modifications of the judgment beneficial to him are considered in his favor.
 - The offended party in a criminal case may appeal the civil aspect despite the acquittal of the accused. Where the trial court convicted the accused, but dismissed the civil action instituted therein, the offended party may appeal the dismissal to the CA.

Compromise on Civil Aspect:

The offended party may compromise the civil aspect of a crime (*Art. 2034, Civil Code*), provided that it must be entered before or during the litigation and not after final judgment. A compromise on the civil aspect is valid even if it turns out to be unsatisfactorily either to one or both of the parties (*Republic v.*

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Sandiganbayan, G.R. Nos. 108292, 108368, 108548-549, 108550).

SECTION 2. WHEN SEPARATE CIVIL ACTION IS SUSPENDED

Primacy of Criminal Action over Civil Action

1. After the filing of the criminal action, the civil action which has been reserved CANNOT be instituted until final judgment has been rendered in the criminal action;
2. If the civil action is instituted BEFORE the filing of the criminal action and the criminal action is subsequently commenced, the pending civil action **shall be suspended** in whatever stage it may be found until final judgment in the criminal action has been rendered.

Exceptions:

1. In cases of independent civil actions based upon Arts. 32, 33, 34 and 2176 of the Civil Code;
2. In cases where the civil action presents a prejudicial question;
3. In cases where the civil action is consolidated with the criminal action; and,
4. Where the civil action is not one intended to enforce the civil liability arising from the offense.

Consolidation of Criminal and Civil Cases

Under the present rule, before judgment on the merit is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. This is a modification of the rule on primacy of a criminal action over civil action.

- The consolidation must be effected in the criminal court, irrespective of the nature of the offense, the amount of civil claim or the rank of the court trying the civil case.
- In cases where the consolidation is given due course, the evidence presented and admitted in the civil case shall be deemed automatically reproduced in the criminal action without prejudice to admission of additional evidence and right to cross-examination.
- The consolidated criminal and civil cases shall be tried and decided jointly.

Note: Article 29 of the Civil Code merely emphasizes that a civil action for damages is not precluded by the acquittal of an accused

for the same criminal act or omission. It does not state that the remedy can be availed of only in a separate civil action.

Acquittal in a Criminal Case does NOT BAR the filing of the Civil Case:

1. The acquittal is based on reasonable doubt, if the civil case has been reserved;
2. The decision contains a declaration that the liability of the accused is not criminal but only civil in nature; and
3. The civil liability is not derived from or based on the criminal act of which the accused is acquitted (*Sapiera vs. Court of Appeals, G.R. No. 128927, September 14, 1999*).

Note: Extinction of the penal action does not carry with it the extinction of the civil action, unless the extinction proceeds from a DECLARATION IN A FINAL JUDGMENT that the fact from which the civil liability might arise did not exist.

- The extinction of the civil liability refers exclusively to civil liability arising from crime (*delict*); whereas, the civil liability for the same act arising from other sources of obligation (*law, contract, quasi-contract, quasi-delict*) is not extinguished EVEN BY A DECLARATION in the criminal case that the criminal act charged has not happened or has not been committed by the accused.
- Where the criminal case was dismissed before trial because the offended party executed an affidavit of desistance, the civil action thereof is similarly dismissed.

Enforcement of Employer's Civil Liability

The employer may not be held civilly liable for the quasi-delict since it is not deemed instituted with the criminal action. In all, the only civil liability of the employer would be his subsidiary liability under the Revised Penal Code. Noteworthy is the fact that the subsidiary liability established in Articles 92 and 103 of the Revised Penal Code may be enforced in the same criminal case by filing in said criminal action a motion for execution against the person subsidiarily liable (*Maniago vs. Court of Appeals, G.R. No. 104392, Feb. 20, 1996*).

SECTION 3. WHEN CIVIL ACTION MAY PROCEED INDEPENDENTLY

- The institution of an independent civil action against the offender under Articles

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32, 33, 34 and 2176 of the Civil Code may proceed independently of the criminal case and at the same time without suspension of either proceeding. The independent civil action requires only a preponderance of evidence and the offended party may be entitled only to the bigger award when the awards made in the cases vary (*Ace Haulers Corp. vs. CA, G.R. No. 127934, Aug. 23, 2000*).

- Recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission may be prosecuted separately **EVEN WITHOUT A RESERVATION**. The reservation and waiver herein refers only to the civil action for the recovery of civil liability arising from the offense charged.

Purpose: To make the court's disposition of the criminal case of no effect whatsoever on the separate civil case.

SECTION 4. EFFECT OF DEATH ON CIVIL ACTIONS

1. If the accused dies **before arraignment** – the case shall be **dismissed without prejudice** to any civil action the offended party may file against the estate of the accused.
2. If the accused dies **after arraignment** during the pendency of the criminal action – the civil liability arising from the *delict* shall be extinguished.

Exceptions:

- a. Where the civil liability is predicated on other sources of obligations such as *law, contract, quasi-contract and quasi-delict, or is an independent civil action*. The action may be continued against the estate of the accused after proper substitution is made either as to the relatives or the estate.
- b. If the civil action has been **reserved and subsequently filed** or such civil action has **been instituted when the accused died**, such civil action will proceed and substitution of parties shall be ordered by the court.

Death of The Accused After Final Appeal – Pecuniary liabilities of the accused are not extinguished. Claims shall be filed against the estate of the accused (*Rule 86*).

SECTION 5. JUDGMENT IN CIVIL ACTION NOT A BAR

The judgment in civil actions based on *Articles 32, 33, 34 and 2176* absolving the defendant from civil liability does not bar the criminal action.

SECTION 6. SUSPENSION BY REASON OF PREJUDICIAL QUESTION

SECTION 7. ELEMENTS OF PREJUDICIAL QUESTION

Prejudicial Question is one which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal (*Agpalo, p.137*).

1. A prejudicial question is based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.
2. **Time to plead:** The prejudicial question may be raised during the preliminary investigation of the offense or in court before the prosecution rests its case.
3. The suspension of the criminal case due to a prejudicial question is only a procedural matter, and is subject to a waiver by virtue of prior acts of the accused.
4. There is no prejudicial question where one case is administrative and the other is civil.
5. If the two cases are both civil or if they are both criminal, the principle finds no application.

Ratio: To avoid two conflicting decisions.

Elements of a Prejudicial Question

1. The civil action must be instituted **PRIOR** to the criminal action.
2. The civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action.
3. The resolution of such issue determines whether or not the criminal action may proceed.

Where to file Petition for Suspension by reason of Prejudicial Question

1. Office of the prosecutor, or
2. Court where the criminal action has been filed for trial at any time before the prosecution rests.

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RULE 112: PRELIMINARY INVESTIGATION

July 5, 1989).

SECTION 1. PRELIMINARY INVESTIGATION DEFINED; WHEN REQUIRED

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

General Rule: Preliminary Investigation is REQUIRED to be conducted BEFORE the filing of a complaint or information for an offense where the penalty prescribed by law is *at least 4 years, 2 months and 1 day (PC Med)* without regard to the fine.

Exception: There is NO right of preliminary investigation under *Section 7, Rule 112 (now Sec 6 under the SC circular)* when a person is LAWFULLY arrested *without a warrant* except in cases provided under *Section 6, Rule 112*.

Instances when Preliminary Investigation may be asked by the Accused

1. If a person is arrested, he can ask for a preliminary investigation BEFORE the filing of the complaint/information BUT he must sign a waiver in accordance with *Article 125, RPC*;
2. AFTER the filing of the information/complaint, the accused may, within 5 days from the time he learns of its filing ask for preliminary investigation.

Purposes of Preliminary Investigation:

1. For the investigating prosecutor to determine if a crime has been committed (*Mercado vs. CA, G.R. No. 109036, July 5, 1995*);
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 (*Rodis vs. Sandiganbayan, G.R. Nos. 71404-09, October 26, 1988*);
4. To protect the state from having to conduct useless and expensive trials (*Tandoc vs. Resullan, G.R. No. L-69210,*

Preliminary Investigation: A Personal Statutory Right

The right to preliminary investigation is a personal right covered by statute and may be waived expressly or by implication. It is not merely procedural but a substantive right included in the due process of law (*Go vs. CA, G.R. No. 101837, Feb. 11, 1992*).

The right to preliminary investigation is deemed WAIVED by:

1. Failure to claim it before the accused pleaded;
 2. His silence;
 3. Failure to request it within 5 days from the time he learns of the filing of the complaint or information, in those instances where the accused is lawfully arrested without a warrant.
- Absence of preliminary investigation does not affect the jurisdiction of the court or invalidate the information if no objection was raised by the accused.
 - If an objection was raised, the court, instead of dismissing the complaint or information, should order the fiscal to conduct it (*Doromal vs. Sandiganbayan, G.R. No. 85468, Sept. 07, 1989*).

Remedies of the Accused if there was no Preliminary Investigation

1. Refuse to enter a plea upon arraignment and object to further proceedings upon such ground;
2. Insist on a preliminary investigation;
3. File a certiorari, if refused;
4. Raise lack of preliminary investigation as error on appeal (*US vs. Banzuela, G.R. No. 10172, 1995*);
5. File for prohibition (*Gondo vs. CA, G.R. No. L-21236, October 1, 1923*).

Note: As preliminary investigation is NOT part of the trial, the dismissal of the case by the investigator will not constitute double jeopardy and will not bar the filing of another complaint for the same offense, but if re-filed, the accused is entitled to another preliminary investigation.

Due process of law demands that no substantial amendment of an information may be admitted without conducting another or a new preliminary investigation. (*Leviste v. Hon. Alameda, G.R. No. 182677, August 3, 2010*).

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SECTION 2. OFFICERS AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION

Persons authorized to conduct a Preliminary Investigation:

1. Provincial or city fiscal and their assistants;
2. National and regional state prosecutors; and
3. Such other officers as may be authorized by law such as: the COMELEC, Ombudsman and PCGG.

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdiction.

Regarding offenses falling within the Original Jurisdiction of the *Sandiganbayan*

- Prosecutors conducting PI of offenses falling within the original jurisdiction of the *Sandiganbayan* shall, after their conclusion, transmit the record and their resolutions to the Ombudsman or his deputy for appropriate action.
- Moreover, the prosecutor cannot dismiss the complaint without the prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an information with the *Sandiganbayan* without being deputized by, and without prior written authority of, the Ombudsman or his deputy.

Authority of COMELEC

The 1987 Constitution mandates the COMELEC not only to investigate but also to prosecute cases of violation of election laws. This authority is exclusive but it may deputize other officials to conduct the investigation and the prosecution (*People vs. Basilla*, G.R. Nos. 83938-40, Nov. 06, 19897).

Authority of the Ombudsman

The power of the Ombudsman to make investigation extends to any illegal act or omission of any public official, whether or not the same is committed in relation to his office. This however does not include administrative cases of court personnel because the 1987 Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel (*Maceda vs. Vasquez*, G.R. No. 102781, Apr. 22, 1993).

The Ombudsman DOES NOT have the following powers:

1. To prosecute before the *Sandiganbayan* any impeachable officers with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office because by constitutional mandate, they can only be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.
2. To prosecute public officers or employees who have committed election offenses.
3. To file an information for an offense cognizable by the regular courts.

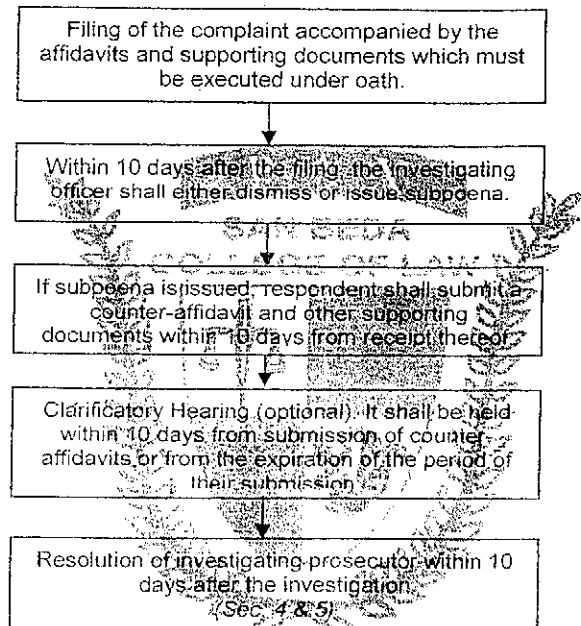
Authority of the PCGG

The PCGG has the power to investigate and prosecute such ill-gotten wealth cases of former President Marcos, his relatives and associates, and graft and corrupt practices cases that may be assigned by the President to the PCGG to be filed with the *Sandiganbayan* (*Zaldivar vs. Sandiganbayan*, G.R. Nos. 79690-79707, April 27, 1988).

Effects of an incomplete Preliminary Investigation:

1. It does **not** warrant the quashal of the information.
2. It does not affect the court's jurisdiction or the validity of the information.

SECTION 3. PROCEDURE



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- If respondent cannot be subpoenaed, or if subpoenaed but does not submit his counter-affidavit within 10 days, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

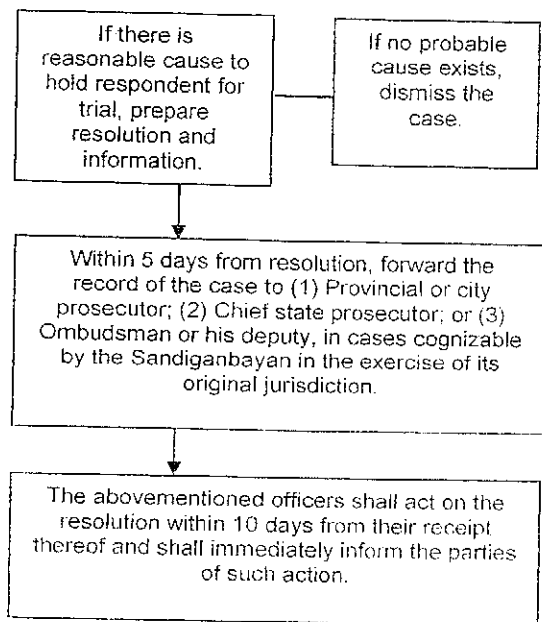
Note: The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit. The respondent also has no right to cross-examine the witnesses which the complainant may present since this is not part of the trial.

Rights of Respondent in a Preliminary Investigation

1. To submit counter-affidavits;
 2. To examine evidence submitted by the complainant;
 3. To be present in the clarificatory hearing.
- The Rules do not require the presence of the respondent in the Preliminary Investigation, what is required is that he be given the opportunity to controvert the evidence of the complainant by submitting counter-affidavits (Mercado vs. CA, G.R. No. 109036, July 5, 1995).

SECTION 4. RESOLUTION OF INVESTIGATING PROSECUTOR AND ITS REVIEW

If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information.



Note: He shall certify under oath in the information that:

1. He or an authorized officer personally examined the complainant and his witnesses;
2. There is reasonable ground to believe that a crime has been committed and the accused is probably guilty thereof;
3. The accused was informed of the complaint and of the evidence against him; and
4. He was given an opportunity to submit controverting evidence.

- No complaint or 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 or his deputy.

Effects of Exclusion of other persons from the information:

1. If during the trial, evidence is shown that such persons should have been charged, the fact that they were not included in the information does not relieve them of criminal liability, and they can be subsequently prosecuted.
2. The accused who has been charged with the offense is not allowed to escape punishment merely because it develops in the course of the trial that there were other guilty participants in the crime.
3. It does not vitiate the validity of the information. Neither is the same a ground for a motion to quash.

Effect if the Information is filed by someone NOT authorized by law

The court does not acquire jurisdiction. The accused's failure to assert lack of authority on the part of the prosecutor in filing the information does not constitute a waiver thereof.

Determination of Assistant Fiscal or State Prosecutor

The determination made by the assistant fiscal or state prosecutor in his resolution is at best **RECOMMENDATORY**. Their findings may be reversed or modified by the provincial or city fiscal.

Where the investigating prosecutor recommends the dismissal of the case but his findings are reversed by the provincial or city prosecutor on the ground that a probable cause exists, the provincial or city prosecutor may himself file or direct another assistant prosecutor to file the corresponding

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information, WITHOUT need of another preliminary investigation.

Appeal to the Secretary of Justice (DOJ Circular No. 70 dated July 3, 2000)

An aggrieved party may appeal by filing a verified petition for review with the Secretary of Justice, and by furnishing copies thereof to the adverse party and the Prosecution Office issuing the appealed resolution (*Section 4*).

The appeal shall be taken within **15 days** from receipt of the resolution, or of the denial of the motion for reconsideration or reinvestigation if one has been filed within 15 days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed (*Sec. 3*).

Unless the Secretary directs otherwise, the appeal shall **NOT STAY** the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution.

The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance (*Sec. 9*).

Note: Par. 2, Sec. 9 of the said circular is directed specifically at the appellant and the trial prosecutor, giving them latitude in choosing a remedy to ensure that the proceedings in court are held in abeyance. However, nowhere in the said provision does it state that the court must hold the proceedings in abeyance. Therefore, the discretion of the court whether or not to suspend the proceedings or the implementation of the warrant of arrest, upon the motion of the appellant or the trial prosecutor, remains unhindered (*Viudez II v. Court of Appeals, G.R. No. 152889, June 5, 2009*).

The Secretary may:

- Order for the reinvestigation of the case (*Sec. 11*);
- Reverse, Modify or Affirm the appealed resolution (*Sec. 12*);
- Act on a Motion for Reconsideration (*Sec. 13*)

Note: In the case of *Roberts, Jr. v. Court of Appeals* (G.R. No. 113930, March 5, 1996), the Supreme Court emphasized that *Crespo v. Mogul* (G.R. No. 1-53373, June 30, 1987) "merely advised the DOJ to, 'as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has

already been filed in Court.'" Furthermore, allowing the DOJ to take cognizance of the appeal on the resolution does not undermine the independence and integrity of the court where the information has been filed. The **real and ultimate test** of the independence and integrity of this court is not the filing of the motions to suspend proceedings and to defer arraignment at that stage of the proceedings but the filing of a motion to dismiss or to withdraw the information on the basis of a resolution of the petition for review reversing the appealed resolution.

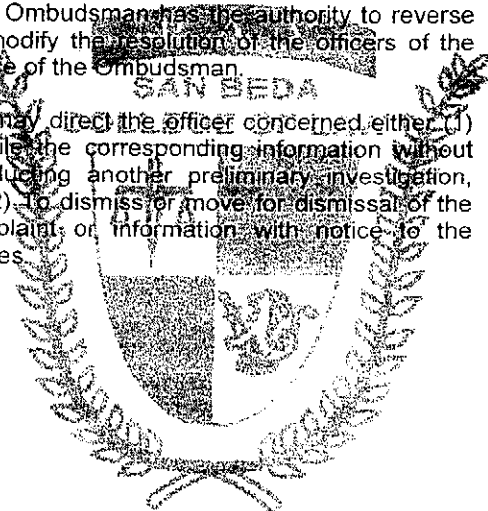
In relation to the *Roberts, Jr. case*, it is important to consider the existing relevant rules:

- Where the information was already filed in court but the accused filed a petition for review of the findings of the investigating prosecutors with the DOJ, the court is bound to **suspend the arraignment** of the accused for a period not exceeding 60 days (*Sec. 11, Rule 116*).
- If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition (*Par. 3, Sec. 5, DOJ Circular No. 70 dated July 3, 2000*).
- If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review (*Sec. 7 DOJ Circular No. 70 dated July 3, 2000*).

Appeal to the Ombudsman

The Ombudsman has the authority to reverse or modify the resolution of the officers of the Office of the Ombudsman.

He may direct the officer concerned either (1) To file the corresponding information without conducting another preliminary investigation, or (2) To dismiss or move for dismissal of the complaint or information with notice to the parties.



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**CONDUCT OF PRELIMINARY
INVESTIGATION REMOVED FROM
JUDGES OF FIRST LEVEL COURTS**

AM No. 05-8-26-SC

- Upon the date of effectivity of these amendments, First Level Courts shall no longer accept new cases for preliminary investigation, which fall under the exclusive jurisdiction of courts of other levels.
- These amendments shall take effect on October 3, 2005 following their publication in a newspaper of general circulation not later than September 15, 2005.

Section 5 of the Rules of Court was deleted by AM 05-8-26-SC

Note: The following is the new Section 5.
(Section 6 is the same as Section 5)

**SECTION 5. WHEN WARRANT OF ARREST
MAY ISSUE**

Probable Cause presupposes a reasonable ground for belief in the existence of facts warranting the proceedings complained of.

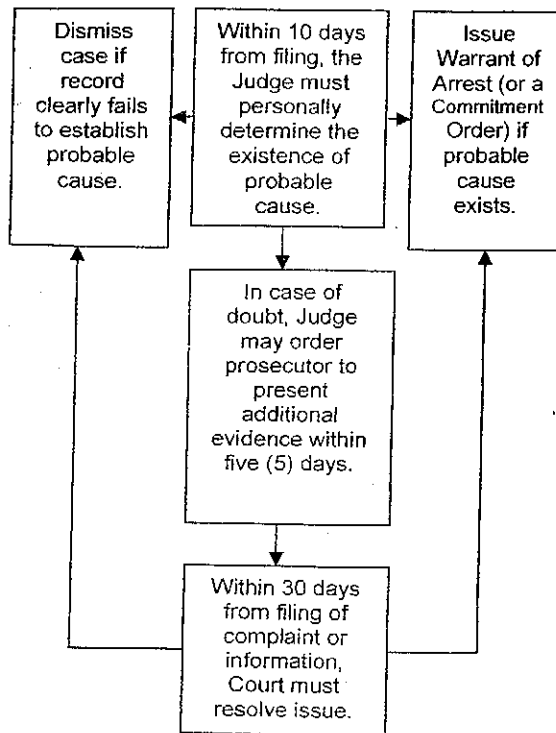
- An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime charged.
- If the judge finds probable cause, he shall issue a **warrant of arrest**, or a **commitment order** if the accused had already been arrested and hold him for trial. If the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest.
- Judges of Regional Trial Courts and inferior courts need NOT personally examine the complainant and witnesses in the determination of probable cause for the issuance of the warrant of arrest (*Soliven vs. Makasiar*, G.R. No. L-82585, Nov. 14, 1988).

He is only required to:

1. Personally evaluate the report and the supporting documents submitted by the fiscal; and
2. On the basis thereof he may:
 - a. Dismiss;
 - b. Issue warrant; or

c. Require further affidavits.

Procedure



- The provincial fiscal, if he believes that the accused should be immediately placed in custody, may file the corresponding information so that the RTC may issue the necessary warrant of arrest (*Samulde vs. Salvani, Jr.*, G.R. No. L-82585, Nov. 14, 1988).
- While the judge may rely on the fiscal's certification thereof, the same is NOT conclusive on him as the issuance of said warrant calls for the exercise of judicial discretion and, for that purpose, the judge may require the submission of affidavits of witnesses to aid him in arriving at the proper conclusion, OR he may require the fiscal to conduct further preliminary investigation or reinvestigation.

**DETERMINATION OF PROBABLE CAUSE:
FISCAL V. JUDGE**

The EXECUTIVE DETERMINATION OF PROBABLE CAUSE is one made during preliminary investigation. It is a function that properly pertains to the **public prosecutor** who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed

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the crime as defined by law and thus should be held for trial.

Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court.

Whether that function has been correctly discharged by the public prosecutor, i.e., whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The JUDICIAL DETERMINATION OF PROBABLE CAUSE is one made by the judge to ascertain whether a **warrant of arrest** should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant (*Leviste v. Hon. Alameda, G.R. No. 182677, August 3, 2010*).

Instances when a Warrant of Arrest is NOT necessary (Sec. 9(c), Rule 112):

1. If the complaint or information was filed after the accused was lawfully arrested without warrant;
2. If the offense is punishable by fine only;
3. If the complaint or information is filed with the MTC and it involves an offense which does not require preliminary investigation, the judge may issue summons instead of warrant of arrest if he is satisfied that there is no necessity for placing the accused under custody.

Remedy of the Accused who believes that there is NO Probable Cause to hold him for trial:

1. To file with the trial court a motion to dismiss on such ground or for the determination of probable cause.
2. If the warrant of arrest has been issued, the accused may file a motion to quash the warrant of arrest or to recall the same on the ground of lack of probable cause.

Reinvestigation:

Once the complaint or information is filed in court, any motion for reinvestigation is addressed to the sound discretion of the court.

While the trial court judge has the power to order the reinvestigation of the case by the prosecutor, he may not, before the prosecutor concludes the reinvestigation, recall said

order, set the case for arraignment and trial, without gravely abusing his discretion.

Municipal Judge may issue Arrest Warrant before conclusion of Preliminary Investigation if:

1. He finds that probable cause exists and
2. There is a necessity of placing respondent under immediate custody.

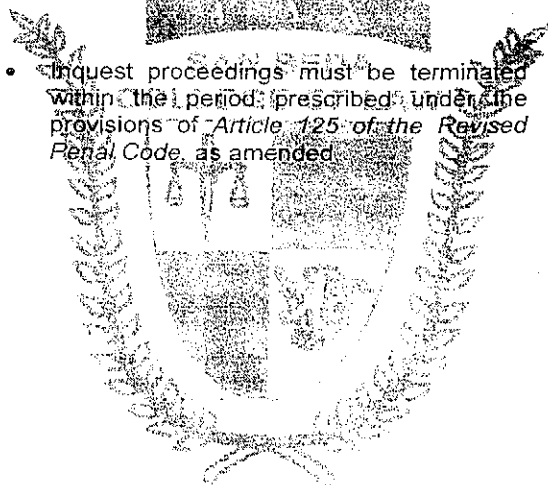
Note: The rule is now that the investigating judge's power to order the arrest of the accused is limited to instances in which there is a **necessity for placing him in custody in order not to frustrate the ends of justice** (*Flores v. Judge Sumalbag, A.M. No. MTJ-97-1115, June 5, 1998*). Thus, even if the judge finds probable cause, he cannot, on such ground alone, issue a warrant of arrest. He must further find there is a necessity of placing the accused under immediate custody in order not to frustrate the ends of justice.

The investigating judge has no power to reduce or change the crime charged in order to justify the grant of bail to the accused. That power belongs to the prosecutor (*Cabarloc v. Judge Cabusora, A.M. No. MTJ-00-1256, December 15, 2000*).

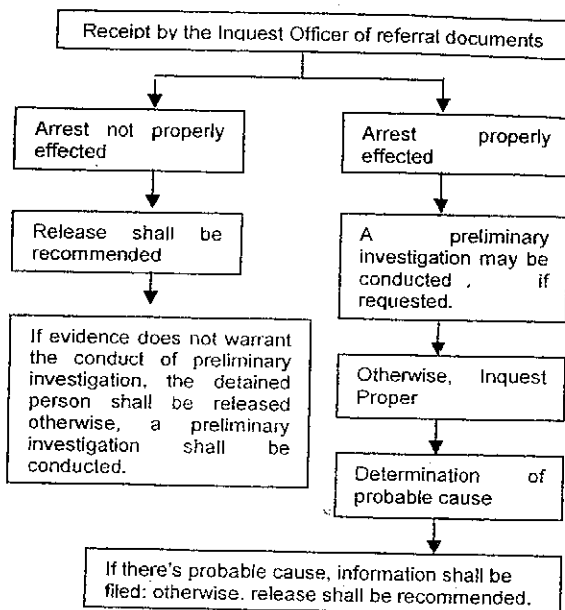
SECTION 6. WHEN ACCUSED LAWFULLY ARRESTED WITHOUT WARRANT

Inquest is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court (*DOJ Circular No. 61, Sept. 21, 1993*).

- Inquest proceedings must be terminated within the period prescribed under the provisions of Article 125 of the Revised Penal Code, as amended.



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Two Situations Contemplated under this Rule:

1. When a person is lawfully arrested without a warrant for an offense requiring a preliminary investigation (Sec. 1, Rule 112) and no complaint or information has yet been filed, he may ask for a preliminary investigation by signing a waiver of the provisions of Art. 125 of the RPC in the presence of his counsel;
2. When the complaint or information was filed without preliminary investigation, the accused may, within 5 days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this Rule.

Note: The five-day (5-day) period is MANDATORY. Failure to file the motion within the said period amounts to waiver of the right to ask for preliminary investigation (*People vs. Figueroa*, G.R. No. L-24273, April 30, 1969).

- Where the information was amended without a new preliminary investigation having been conducted, the 5-day period is computed from the time the accused learns of the filing of the amended information.
- Where the trial court has granted a motion for reinvestigation, it must hold in abeyance the arraignment and trial of the accused until the prosecutor shall have conducted and made a report on the result of such reinvestigation.

Note: The rule in Sec. 6 does not apply if the person is NOT lawfully arrested without a warrant (*Go vs. CA*, 206 SCRA 138).

Right to Bail pending Preliminary Investigation

A person lawfully arrested may post bail before the filing of the information or even after its filing without waiving his right to preliminary investigation, provided that he asks for a preliminary investigation by the proper officer within the period fixed in the said rule (*People vs. Court of Appeals*, May 29, 1995).

**HUMAN SECURITY ACT OF 2007
(R.A. No. 9372)**

SEC. 18. PERIOD OF DETENTION WITHOUT JUDICIAL WARRANT OF ARREST

The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of **three (3) days** counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel.

Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

- The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night.
- It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by

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questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why.

- The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three (3) calendar days from the time the suspect was brought to his/her residence or office.
- Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided, That* where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.
- The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who will fail to notify any judge.

SECTION 7. RECORDS

- An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.
- Records of the preliminary investigation shall NOT automatically form part of the records of the case. Courts are not compelled to take judicial notice thereof. It must be introduced as evidence.

SECTION 8. CASES NOT REQUIRING A PRELIMINARY INVESTIGATION NOR COVERED BY THE RULE ON SUMMARY PROCEDURE

If filed with the Prosecutor (*same with Sec. 3 (a) of this rule*):

1. The complaint shall state the known address of the respondent;
2. It shall be accompanied by affidavits of the complainant and his witnesses as well as

other supporting documents to establish probable cause;

3. The affidavits shall be executed under oath;
4. They shall be in such number of copies as there are respondents, plus two copies for the official file.
5. Within 10 days from filing, the prosecutor shall take appropriate action without any further investigation since this refers to cases not entitled to preliminary investigation.

Note: For cases under the Revised Rules on Summary Procedure, no warrant shall be issued **except** where the accused fails to appear after being summoned.

- If the complaint is filed with the prosecutor involving an offense punishable by imprisonment of less than 4 years, 2 months and 1 day, the procedure in *Rule 112, Section 3 (a)* shall be observed.
- If the complaint is filed with the MTC, the same procedure under *Rule 112, Section 3 (a)* shall be observed.

If the Complaint or Information is filed with the MTC:

1. Sec 3a of this rule must be followed.
2. The judge shall personally evaluate the evidence, or personally examine, in writing and under oath, the complainant and his witnesses in the form of searching questions.
3. The judge shall act on it within 10 days after the filing of the complaint or information:

- If in doubt, may require submission of additional evidence.
- If probable cause does not exist, dismiss complaint or information.
- If it exists, issue warrant of arrest or commitment order. ~~Instead, arrested.~~ May issue summons instead of warrant of arrest if judge is satisfied that there is no necessity for placing the accused under custody.

Conditions that Must Concur for the Issuance of Warrant of Arrest

1. Must personally evaluate the report and supporting documents submitted by the fiscal regarding the existence of probable cause.
2. If on the basis thereof he finds no probable cause, he may disregard the report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the

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- existence of probable cause.
3. Must personally be satisfied that a probable cause exists; (*Soliven vs. Makasjar*, G.R. No. L-82585, Nov. 14, 1988)

RULE 113: ARREST

SECTION 1. DEFINITION OF 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 (*Sec. 1 Rule 113*).

Invitations are not arrests and are usually not unconstitutional, but in some cases may be taken as commands (*Babst v NBI*, G.R. No. L-62992, September 28, 1984); However, the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed is considered as placing him under "custodial investigation" (*Republic Act 7438*).

Modes of Arrest:

1. Arrest by virtue of a warrant;
2. Arrest without a warrant under exceptional circumstances as may be provided by statute. (*Sec. 5, Rule 113*)

Who may Issue Warrant of Arrest

The 1987 Constitution speaks of "judges" which means judges of all levels. This power may not be limited much less withdrawn by Congress. The power to determine the existence of probable cause is a function of the judge and such power lies in the judge alone (*People vs. Inting*, G.R. No. 88919, July 25, 1990).

Exception: The BID Commissioner may issue warrant of arrest of an undesirable alien sought to be deported because it is not criminal in nature and the act of deportation is an act of State (*Harvey vs. Santiago*, G.R. No. 82544, June 28, 1988).

Essential Requisites of a Valid Warrant of Arrest

1. Issued upon probable cause which must be determined PERSONALLY by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce;
2. After evaluation of prosecutor's report and the evidence adduced during the preliminary investigation (*Soliven vs. Makasjar*, G.R. No. L-82585, Nov. 14, 1988);
3. The warrant must particularly describe the

person to be arrested;

4. In connection with a specific offense or crime.

Remedy for Warrants Improperly Issued

Where a warrant of arrest was improperly issued, the proper remedy is a petition to quash it, NOT a petition for habeas corpus, since the court in the latter case may only order his release but not enjoin the further prosecution or the preliminary examination of the accused (*Alimpoos vs. Court of Appeals*, G.R. No. L-27331, July 30, 1981).

Note: Posting of bail does not bar one from questioning illegal arrest (*Section 26, Rule 114, Rules of Court*).

SECTION 2. ARREST; HOW MADE

Modes of Effecting Arrest:

1. By an actual restraint of the person to be arrested;
2. By his submission to the custody of the person making the arrest.

Reasonable amount of Force may be used to effect Arrest

An officer, having the right to arrest an offender, may use such force as is necessary to effect his purpose, and to a great extent he is made the judge of the degree of force that may be properly exerted.

Upon arrest, the following may be confiscated from the person arrested:

1. Objects subject of the offense or used or intended to be used in the commission of the crime;
2. Objects which are the fruits of the crime;
3. Those which might be used by the arrested person to commit violence or to escape;
4. Dangerous weapons and those which may be used as evidence in the case.
5. Objects the possession of which is illegal per se.

Note: Arrest must precede the search. The process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search. Reliable information alone is not sufficient to justify a warrantless arrest under Section 5 of Rule 113 (*People v. Racho*, G.R. No. 186529, August 31, 2010).

- The rules require, in addition, that the accused performs some overt act that would indicate that he has committed, is

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actually committing, or is attempting to commit an offense (*People vs. Tudtud*, G.R. No. 144036, September 26, 2003).

SECTION 3. DUTY OF ARRESTING OFFICER

A duly issued warrant authorizes the proper officer:

1. To make an arrest thereunder but also makes it his duty to carry out without delay the commands thereof;
2. To deliver the person arrested to the nearest police station or jail without unnecessary delay.

SECTION 4. EXECUTION OF WARRANT

The Judge issues a warrant of arrest in two instances:

1. **Upon the filing of the information by the prosecutor.**

In issuing this kind of warrant, the judge *does not personally examine* the complainant and the witnesses he may produce, but he merely evaluates personally the report and supporting documents and other evidence adduced during the preliminary investigation and submitted to him by the prosecutor, and if he finds probable cause on the basis thereof he issues the warrant for the arrest of the accused.

2. **Upon application of a peace officer**

In this kind of warrant, the judge *must personally examine* the applicant and the witnesses he may produce, to find out whether there exists probable cause, otherwise, the warrant issued is null and void. He must subject the complainant and the witnesses to searching questions. The reason for this is there is yet no evidence on record upon which he may determine the existence of probable cause.

- The head of office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within 10 days from its receipt.
- Within 10 days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of failure to execute the warrant, he shall state the reasons therefore.

Period of Warrant of Arrest

- Unlike a search warrant, the validity of

which is limited to ten (10) days, after which it becomes void (*Section 9, Rule 126*), no time limit is fixed for the validity of a warrant of arrest.

- This must be so, for the return mentioned in this section refers not to the physical delivery of the very same copy of the process to the issuing court, but the report of the officer charged with its execution on the action taken by him thereon. In short, the ten-day period is only a directive to the officer executing the warrant to make a return to the court (*People v. Givera*, G.R. No. 132159, January 18, 2001).

SECTION 5. ARREST WITHOUT WARRANT; WHEN LAWFUL

General Rule: No peace officer or person has the power or authority to arrest anyone without a warrant **except** in those cases expressly authorized by law (*Umil vs. Ramos*, G.R. No. 81567, October 3, 1991).

Exceptions: LAWFUL WARRANTLESS ARREST

1. When, IN HIS PRESENCE, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (*In flagrante delicto arrests*);
2. When an offense has in fact just been committed, and he has probable cause to believe based on PERSONAL KNOWLEDGE of fact and circumstance that the person to be arrested has committed it (*Doctrine of Hot Pursuit*).

Note: There must be a large measure of immediacy between the time the offense was committed and the time of arrest (*Go vs. CA*, G.R. No. 101837, Feb. 11, 1992).

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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The same is founded on the principle that at the time of the arrest the escapee is in the *continuous act* of committing a crime (*Evasion of the service of sentence*).

4. Where a person who has been lawfully arrested escapes or is rescued (*Sec. 13, Rule 113*);
5. By the bondsman for the purpose of surrendering the accused (*Sec. 23, Rule 114*); and

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6. Where the accused attempts to leave the country without permission of the court (Sec. 23, Rule 114).
- In cases falling under nos. 1 and 2, the person arrested shall be delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 6 of Rule 112. (Formerly Sec. 7)
- If the arrest was effected without warrant, the arresting officer must comply with the provisions of Art. 125 of the RPC.

In Flagrante Delicto Arrests

An offense is committed in the presence or within the view of the person making the arrest when he sees the offense, although at a distance, or hears the disturbances created thereby and proceeds at once to the scene thereof; or the offense is continuing, or has been consummated, at the time the arrest is made (*People vs. Evaristo*, G.R. No. 93828, Dec. 11, 1992).

- The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts. A reasonable suspicion therefore must be founded on probable cause coupled with good faith on the part of the peace officers making the arrest (*Posadas vs. Ombudsman*, G.R. No. 131492, Sept. 29, 2000).

Buy-bust Operations

In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction. (*People vs. Agulay*, G.R. No. 181747, September 26, 2008).

- A form of entrapment which has been repeatedly accepted to be a valid means of arresting violators of the Dangerous Drugs Law. The violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime (*People vs. Juatan*, G.R. No. 1043376, Aug. 20, 1996).

The buy-bust operation and the search and seizure pursuant to the buy-bust operation must be continuous in order to be valid (*People vs. Enrile*, G.R. No. 74189, May 26, 1993).

Elements of Hot Pursuit Arrest:

1. Offense has been committed. The rule now is the indubitable existence of a crime is not necessary to justify a warrantless arrest (*People vs. Ramos*, G.R. Nos. 85401-02, June 7, 1990);
2. Offense has JUST been committed. The time interval between the actual commission of the crime and the arrival of the arresting officer must be brief (*Go vs. CA*, G.R. No. 101837, Feb. 11, 1992);
3. Probable cause based on personal knowledge.

Note: Probable Cause must be based upon "PERSONAL KNOWLEDGE" which means 'an actual belief or reasonable grounds of suspicion.'

Rules on Illegality of Arrest

1. An accused who enters his plea of NOT guilty and participates in the trial waives the illegality of the arrest. Objection to the illegality must be raised *before arraignment*, otherwise it is deemed waived, as the accused, in this case, has voluntarily submitted himself to the jurisdiction of the court (*People vs. Macam*, G.R. Nos. L-91011-12, November 24, 1994);
2. Illegality of warrantless arrest may be cured by filing of an information in court and the subsequent issuance by the judge of a warrant of arrest;
3. Once a person has been duly charged in court, he may no longer question his detention by petition for habeas corpus; his remedy is to quash the information and/or the warrant of arrest.

SECTION 6. TIME OF MAKING ARREST

Unlike a search warrant which must be served only in daytime, an arrest may be made on any day and at any time of the day, even on a Sunday. This is justified by the necessity of preserving the public peace.

SECTION 7. METHOD OF ARREST OF OFFICER BY VIRTUE OF WARRANT

Under this rule, an arrest may be made even if the police officer is not in possession of the warrant of arrest (*Mallari vs. Court of Appeals*, G.R. No. 110569, Dec. 09, 1996). Exhibition of the warrant prior to the arrest is not necessary.

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However, if after the arrest, the person arrested so requires, the warrant shall be shown to him as soon as practicable.

SECTION 8. METHOD OF ARREST BY OFFICER WITHOUT WARRANT

SECTION 9. METHOD OF ARREST BY PRIVATE PERSON

Citizen's arrest refers to arrest effected by a private person.

Method of arrest		Exception to the rule on giving information
Sec. 7	The officer shall inform the person to be arrested the cause of the arrest and the fact that the warrant has been issued for his arrest. Note: The officer need not have the warrant in his possession at the time of the arrest BUT must show the same after the arrest, if the person arrested so requires.	1. When the person to be arrested flees; 2. When he forcibly resists before the officer has an opportunity to inform him; and 3. When the giving of such information will imperil the arrest.
Sec. 8	The officer shall inform the person to be arrested of his authority and the cause of the arrest w/out a warrant	1. When the person to be arrested is engaged in the commission of an offense or is pursued immediately after its commission; 2. When he has escaped, flees, or forcibly resists before the officer has an opportunity to so inform him; and 3. When the giving of such information will imperil the arrest.
Sec. 9	The private person shall inform the person to be arrested of the intention to arrest him and the cause of the arrest. Note: Private person must deliver the arrested person to the nearest police	1. When the person to be arrested is engaged in the commission of an offense or is pursued immediately after its commission; 2. When he has escaped, flees, or forcibly resists before the person

station or jail, otherwise, he may be held criminally liable for <i>illegal detention</i> .	has an opportunity to so inform him; and 3. When the giving of such information will imperil the arrest.
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SECTION 10. OFFICER MAY SUMMON ASSISTANCE

Only an officer making the arrest is governed by the rule. It does not cover a private individual making an arrest.

SECTION 11. RIGHT OF OFFICER TO BREAK INTO BUILDING OR ENCLOSURE

Requisites before an officer can break into a building or enclosure to make an arrest:

1. That the person to be arrested is or is reasonably believed to be in said building;
2. That he has announced his authority and purpose for entering therein;
3. That he has requested and been denied admittance.

- Generally, a lawful arrest may be made anywhere, even on private property or in a house. This rule is applicable both where the arrest is under a warrant, and where there is valid warrantless arrest.
- This provision applies when the person making the arrest is an *officer*.

SECTION 12. RIGHT TO BREAK OUT OF THE BUILDING OR ENCLOSURE TO EFFECT RELEASE

A private person making an arrest CANNOT break in or out of a building or enclosure because only officers are allowed by law to do so.

SECTION 13. ARREST AFTER ESCAPE OR RESCUE

Where a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the country. The pursuit must be immediate.

Note: The fugitive may be retaken by any person who may not necessarily be the same person from whose custody he escaped or was rescued. Even a private person may, without a warrant, arrest a convicted felon who has escaped and is at large, since he might

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also, before conviction, have arrested the felon (*Salonga vs. Holland*, G.R. No. L-268, March 28, 1946).

SECTION 14. RIGHT OF ATTORNEY OR RELATIVE TO VISIT PERSON ARRESTED

R.A. No. 7438 defined certain rights of persons arrested, detained, or under custodial investigation, with the penalties for violations thereof.

RULE 114: BAIL

SECTION 1. BAIL DEFINED

Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as required under the conditions specified by the rule (Sec. 1, Rule 114).

Ratio: RIGHT to BAIL flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom. Thus, the right to bail only accrues when a person is arrested or deprived of his liberty. The right to bail presupposes that the accused is under legal custody (*Feliciano v. Pasicolan*, 2 SCRA 888; *Mendoza v. CFI of Quezon*, 51 SCRA 369, *Paderanga v. Court of Appeals*, 64 SCAD 42, 247 SCRA 741).

Purposes of Bail:

1. To relieve an accused from the rigors of imprisonment until his conviction and yet secure his appearance at the trial (*Almeda vs. Villaluz*, G.R. No. L-31665, August 6, 1975);
2. To honor the presumption of innocence until his guilt is proven beyond reasonable doubt;
3. To enable him to prepare his defense without being subject to punishment prior to conviction.

Note: Bail is available only to persons in custody of the law. A person is in the custody of law when he has been either arrested or otherwise deprived of his freedom or when he has voluntarily submitted himself to the jurisdiction of the court by surrendering to the proper authorities (*Dinapol vs. Baldado*, A.M. No. 92-898, Aug. 5, 1993).

The right to bail is available to those detained but have not been formally charged (*Teehankee v. Rovira*, G.R. No. L-101, December 20, 1945).

- All persons, **except** those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended (Section 13, Article III, 1987 Constitution).

Right to Bail in Extradition Proceedings

Generally, the right to bail is available only in criminal proceedings (*Government of the USA v. Purganan*, G.R. No. 148571, September 24, 2002). An extradition although not a criminal proceeding by its nature, still entails a deprivation of liberty on the part of the potential extraditee and the means employed to attain the purpose of extradition is also a machinery of criminal law (*Herrera*, 441).

A potential extraditee may be subjected to arrest, to a prolonged restraint of liberty, and forced to transfer to the demanding state following the proceedings.

"Temporary detention" may be a necessary step in the process of extradition, but the length of time of the detention should be reasonable. The prospective extraditee thus bears the onus probandi of showing that he or she is not a flight risk and should be granted bail (*Herrera*, 441).

The Philippines, along with the other members of the family of nations, is committed to uphold the fundamental human rights as well as value the worth and dignity of every person under the time honored principle of *pacta sunt servanda*. Thus if bail can be granted in deportation cases, there is no justification why it should not also be allowed in extradition cases. (*Government of Hongkong Special Administrative Region v. Olatia*, G.R. No. 153675, April 19, 2007).

While a possible extraditee is not entitled to notice and hearing before the issuance of the warrant of arrest, the cancellation of bail without prior notice and hearing is a violation of the extraditee's right to due process tantamount to grave abuse of discretion (*Rodriguez v. The Hon. Presiding Judge of RTC Manila*, Branch 17, G.R. No. 157977, February 27, 2006).

Note: Since an extradition proceeding is in the nature of a *sui generis*, the standard of proof

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required in granting and denying bail, according to former Chief Justice Renato S. Puno, should be "CLEAR AND CONVINCING EVIDENCE." He said that this standard should be lower than proof beyond reasonable but higher than preponderance of evidence. Thus, the potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition (*Herrera*, 442).

Bail in Deportation Proceedings:

Bail in deportation proceedings is WHOLLY DISCRETIONARY. It is not allowed in deportation proceedings since they do not constitute a criminal action.

Forms of bail:

1. Corporate surety;
2. Property bond;
3. Cash deposit;
4. Recognizance.

Bail Bond	Recognizance
An obligation under seal given by the accused with one or more sureties, and made payable to the proper officer with the condition to be void upon performance by the accused of such acts as he may legally be required to perform.	An obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act.

Prosecution Witnesses may also be required to post bail to ensure their appearance at the trial of the case where:

1. There is a substitution of information (*Sec. 4, Rule 110*); and
2. Where the court believes that a material witness may not appear at the trial (*Sec. 14, Rule 119*).

Requiring Arraignment before grant of Bail, NOT Valid

It is a mistaken theory for the court to first require arraignment before the grant of bail where it is authorized. The **reasons** are:

1. The trial court could ensure the presence of the accused at the arraignment precisely by granting bail and ordering his presence at any stage of the proceedings such as arraignment (*Section 2(b), Rule 114*); and
2. The accused would be placed in a position where he has to choose between filing a motion to quash and thus delay his release on bail, and foregoing the filing of

a motion to quash so that he can be arraigned at once and thereafter be released on bail (*Lavides v. Court of Appeals*, G.R. No. 129670, Feb. 01, 2000).

SECTION 2. CONDITIONS OF THE BAIL; REQUIREMENTS

Conditions of Bail:

1. The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the RTC, irrespective of whether the case was originally filed in or appealed to it;
2. The accused shall appear before the proper courts whenever so required by the court or these Rules;
3. The failure of the accused to appear at the trial without justification despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed *in absentia*;
4. The bondsman shall surrender the accused to court for execution of the final judgment.

The Surety's liability covers all these three stages:

1. Trial
2. Promulgation, *irrespective of whether the case was originally filed in or appealed to RTC*
3. The execution of the sentence

- If the accused presents his notice of appeal, the trial court will order the accused to be taken into custody in the absence of a new bail bond on appeal duly approved by the court. If the accused does not appeal, the bondsman must produce the accused on the 15th day from promulgation of sentence for service of sentence.

Note: The trial court may impose other conditions in granting bail where the likelihood of the accused jumping bail or of committing other harm to the citizenry is feared (*Alfeda vs. Villaluz*, G.R. No. L-31665 August 6, 1975).

However, the court may not impose additional obligations upon the bondsman other than those provided for by law. The obligation imposed upon the bondsmen cannot be greater nor of a different character than those imposed upon the accused (*Bandoy vs. Judge of Court of First Instance*, G.R. No. L-5200, March 11, 1909).

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- By filing a fake bail bond, an appellant is deemed to have escaped from confinement during the pendency of his appeal and in the normal course of things, his appeal should be dismissed based on Sec. 8, Rule 124 (*People v. Del Rosario*, G.R. No. 107297-98, December 19, 2000).

Note: The condition of the bail that "The accused shall appear before the proper court whenever so required by the court or these rules" operates as a valid restriction on his right to travel (*Manotoc Sr. vs. CA*, G.R. No. L-63409, May 30, 1986).

SECTION 3. NO RELEASE OR TRANSFER EXCEPT ON COURT ORDER OR BAIL

- No person under detention by legal process shall be released or transferred **except** upon order of the court or when he is admitted to bail.

SECTION 4. BAIL, A MATTER OF RIGHT; EXCEPTION

A Matter of Right

1. Before or after conviction by the inferior courts; AND
 2. Before conviction by the RTC, **except** when the imposable penalty is death, *reclusion perpetua* or life imprisonment AND the evidence of guilt is strong.
- In instances where bail is a matter of right and the bail to be granted is based on the recommendation of the prosecution as stated in the information or complaint, a hearing is NOT necessary.
 - But where, however, there is a reduction of bail as recommended or after conviction by the RTC of an offense not punishable by death, *reclusion perpetua*, or life imprisonment wherein the grant of bail is discretionary, there must be a hearing before a bail is granted in order to afford the prosecution the chance to oppose it (*Bangayan vs. Butacan*, A.M. No. MTJ-00-1320, November 22, 2000).
 - The prosecution cannot adduce evidence for the denial of bail where it is a matter of right. However, where the grant of bail is discretionary, the prosecution may show proof to deny the bail.

Notice of hearing required

Whether bail is a matter of right or of discretion, reasonable notice of hearing is

required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.

Hearing is not required if bail is recommended by prosecution and it is a matter of right.

Summary of the evidence for the prosecution

The court's order granting or refusing bail must contain a summary of the evidence for the prosecution, otherwise the order granting or denying bail may be invalidated because the summary of the evidence for the prosecution which contains the judge's evaluation of the evidence may be considered as an aspect of procedural due process for both the prosecution and the defense.

It would be premature, not to say incongruous, to file a petition for bail for someone whose freedom has yet to be curtailed.

- The right to bail, embodied in the Constitution, is not available to military personnel or officer charged with a violation of the Articles of War (*Aswat vs. Galido*, G.R. No. 88381-82, November 21, 1991).

SECTION 5. BAIL, WHEN DISCRETIONARY

BAIL IS DISCRETIONARY:

1. Upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment, admission to bail is discretionary (Sec. 5);
2. After conviction by the RTC wherein a penalty of imprisonment exceeding 6 but not more than 20 years is imposed, and not one of the circumstances below is present and proved, bail is a matter of discretion (Sec. 5):
 - a. Recidivism, quasi-recidivism, or habitual delinquency or commission of crime aggravated by the circumstances of reiteration;
 - b. Previous escape from legal confinement, evasion of sentence or violation of the conditions of bail without valid justification;
 - c. Commission of an offense while on probation, parole, or under conditional pardon;
 - d. Circumstance of the accused or his

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case indicates the probability of flight if released on bail;

- e. Undue risk of commission of another crime by the accused during pendency of appeal.

When bail will not be granted:

1. Regardless of stage of the criminal prosecution, no bail shall be allowed if the accused is charged with a capital offense or an offense punishable by *reclusion perpetua* AND the evidence of guilt is strong (Sec. 7);
2. After conviction by the RTC imposing a penalty of imprisonment exceeding 6 years but not more than 20 years and any of the circumstance enumerated above and other similar circumstance is present and proved, no bail shall be granted (Sec. 5);
3. No bail shall be allowed after judgment has become final UNLESS accused applied for probation before commencing to serve sentence of penalty and offense within purview of probation law (Sec. 24).

Where to file Bail upon Conviction by the RTC of an Offense Not Punishable by Death, Reclusion Perpetua, Or Life Imprisonment:

1. With the trial court despite the filing of a notice of appeal provided it has not transmitted the original record to the appellate court.
2. With the appellate court if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable.

SECTION 6. CAPITAL OFFENSE, DEFINED

Capital Offense refers to an offense which, under the law existing at the time of its commission AND at the time of the application to be admitted to bail, may be punished with death.

- If the law at the time of commission does not impose the death penalty, the subsequent amendment of the law increasing the penalty cannot apply to the case, otherwise it would be *ex post facto*, and penalties are determined by the law at the time of the commission of the offense.
- If the law at the time of the application for bail has amended the prior law which imposed the death penalty by reducing such penalty, such favorable law generally has a retroactive effect.

SECTION 7. CAPITAL OFFENSE NOT BAILABLE

General Rule: Capital offense or those punishable by *reclusion perpetua*, life imprisonment or death are NOT BAILABLE when evidence of guilt is strong.

Note: R.A. No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines, June 24, 2006) abolished the death penalty. Hence, there is no more capital offense.

Exception: If the accused charged with a capital offense is a minor.

Ratio: One who faces a probable death sentence has a particularly strong temptation to flee. This reason does not hold where the accused has been established without objection to be a minor who by law cannot be sentenced to death (*Bravo, Jr. vs. Borja, G.R. No. 65228, February 18, 1985*).

For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered (Sec. 34, RA No. 9344 or the Juvenile Justice and Welfare Act of 2006).

- RA No. 9344 (Juvenile Justice and Welfare Act of 2006) suspends sentence of persons convicted of an offense while they were below 18 years old but above 15 years old, who acted with discernment.
- If they acted without discernment, only civil liability may attach. For those committed by minors 15 years old or under, there is NO criminal liability, only civil liability.
- Hence, youthful offenders are not put in jail by police authorities upon their arrest for the reason that if convicted they are not committed how much more when they are not tried much less investigated.
- The capital nature of the offense is determined by the penalty prescribed by law and not the penalty actually imposed on the accused (*Bravo, Jr. vs. Borja, G.R. No. 65228, February 18, 1985*; *Bravo, Jr. v. Borja, G.R. No. L-34851, February 25, 1985*).

SECTION 8. BURDEN OF PROOF IN BAIL APPLICATION

The hearing should be summary or otherwise in the discretion of the court. The burden of

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proving that the evidence of guilt is strong lies with the prosecution (*Comia vs. Antona, A.M. No. RTJ-99-1518, 14 August 2000*).

Duties of the Judge when Bail Application is Filed:

1. Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation. Bail may be granted only after motion for that purpose has been filed. It may not be granted *motu proprio* (*Lardizabal vs. Judge Reyes, A.M. No. MTJ-94-897, Dec. 25, 1994*);
2. Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence. If the prosecution refuses to adduce evidence, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions (*Baylon vs. Sison, A.M. No. 93-2-037, April 6, 1995*);
3. Decide whether the evidence of guilt is strong. The decision must contain a complete summary of the evidence of the prosecution (*Baylon vs. Sison, 243 A.M. No. 93-2-037, April 6, 1995*);
4. If the guilt of the accused is not strong, discharge the accused upon approval of the bail bond. Otherwise, the petition should be denied (*Basco vs. Judge Rapatalo, A.M. No. RTJ-96-1335, March 5, 1997*).

Evidence of guilt is strong when proof is evident or the presumption of guilt is strong. The test is NOT whether the evidence establishes guilt beyond reasonable doubt but rather whether it shows evident guilt or a great presumption of guilt.

- The evidence presented during the bail hearings are considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the witness is dead, outside of the Philippines, or otherwise unable to testify.
- The determination of the weight of the evidence is discretionary upon the judge and its outcome cannot be compelled by mandamus (*Payno v. Lesaca, G.R. No. L-45176, July 22, 1936*).
- If bail is denied by trial court, the review jurisdiction of the Supreme Court may be invoked, but not without first applying to

the CA (*People vs. Magallanes, G.R. Nos. 118013-14, Oct. 11, 1995*).

SECTION 9. AMOUNT OF BAIL; GUIDELINES

Factors to be considered in fixing the reasonable amount of bail: (Not Exclusive)

1. Financial ability of the accused to give bail;
2. Nature and circumstances of the offense;
3. Penalty of the offense charged;
4. Character and reputation of the accused;
5. Age and health of the accused;
6. Weight of evidence against the accused;
7. Probability of the accused appearing at the trial;
8. Forfeiture of other bail;
9. The fact that the accused was a fugitive from justice when arrested; and
10. Pendency of other cases when the accused is on bail.

- But, at the bottom, in bail-fixing, the principal factor considered, to the determination of which most other factors are directed, is the probability of the appearance of the accused, or of his flight to avoid punishment. It should be high enough to assure the presence of defendant but not higher than is reasonably calculated to fulfill the purpose (*Villaseñor vs. Abano, G.R. No. L-23599, Sept. 29, 1967*).

- Bail must not be in a prohibitory amount. Excessive bail is not to be required.

SECTION 10. CORPORATE SURETY

Any domestic or foreign corporation, licensed as a surety in accordance with law and currently authorized to act as such, may provide bail by a bond subscribed jointly by the accused and an officer of the corporation duly authorized by its board of directors.

SECTION 11. PROPERTY HOW POSTED

Property Bond is an undertaking constituted as a lien on the real property given as security for the amount of the bail.

- Within 10 days after the approval of the bond, the accused shall cause the annotation of the lien on the certificate of title with the Registry of Deeds, and on the corresponding tax declaration in the office of the provincial, city, and municipal assessor concerned. Failure to do so shall

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be sufficient cause for the cancellation of the property bond and re-arrest and detention of the accused.

SECTION 12. QUALIFICATIONS OF SURETIES IN PROPERTY BOND

The qualifications of sureties in a property bond shall be as follows:

1. Each must be a resident owner of real estate within the Philippines;

Note: This is merely a minimum requirement. Thus, the court may require that a surety be a resident of a specific place (e.g., province, city) *Reason:* So the sureties will be within the reach of court processes (*Villaseñor v. Abano*, G.R. No. L-23599, September 29, 1967).

2. Where there is only one surety, his real estate must be worth at least the amount of the undertaking; and
 3. If there are two or more sureties, each may justify in an amount less than that expressed in the undertaking but the aggregate of the justified sums must be equivalent to the whole amount of the bail demanded.
- In all cases, every surety must be worth the amount specified in his own undertaking over and above all just debts, obligations and properties exempt from execution.

Note: Philippine residency is required of a property bondsman. The reason for this is that bondsmen in criminal cases, residing outside of the Philippines, are not within the reach of the processes of the courts (*Villaseñor vs. Abano*, G.R. No. L-23599; Sept. 29, 1967).

Section 13. JUSTIFICATION OF SURETIES

Before accepting a Surety or Bail Bond, the following requisites must be complied with:

1. Photographs of the accused;
2. Affidavit of justification;
3. Clearance from the Supreme Court;
4. Certificate of compliance with *Circular No. 66* dated September 19, 1996;
5. Authority of the agent; and
6. Current certificate of authority issued by the Insurance Commissioner with a financial statement showing the maximum underwriting capacity of the surety company.

- The purpose of the rule requiring the affidavit of qualification by the surety before the judge is to enable the latter to determine whether or not the surety possesses the qualification to act as such, especially his financial worth.
- The justification being under oath, any falsity introduced thereto by the surety upon a matter of significance would render him liable for perjury.

SECTION 14. DEPOSIT OF CASH AS BAIL

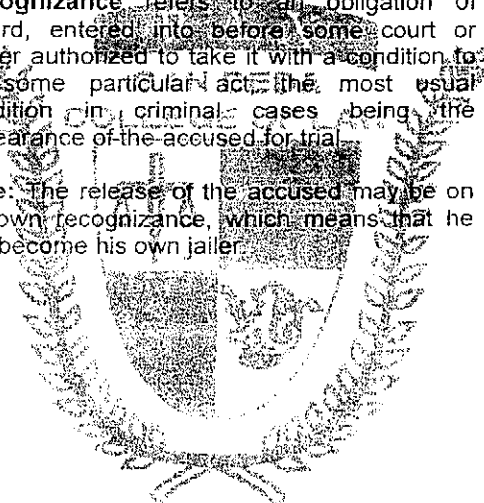
- The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue, or provincial, city or municipal treasurer, or the clerk of court where the case is pending, the amount of bail fixed by the court or recommended by the fiscal who investigated or filed the case.
- Release of the accused without a need for a court order: Just submit (1) proper certificate of deposit and (2) written undertaking showing compliance with requirements.
- The money deposited shall be considered as bail and applied to the payment of fine and costs. The excess, if any, shall be returned to the accused or to whoever made the deposit.

Note: The trial court may not reject otherwise acceptable sureties and insist that the accused obtains his provisional liberty only thru a cash bond. Excessive bail shall not be required (*Almeda vs. Villaluz*, G.R. No. L-31665, August 6, 1975).

SECTION 15. RECOGNIZANCE

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

Note: The release of the accused may be on his own recognizance, which means that he has become his own jailer.



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**SECTION 16. BAIL WHEN NOT REQUIRED;
REDUCED BAIL ON RECOGNIZANCE**

Instances wherein the accused may be released on recognizance, without putting Bail or on reduced Bail

Can be released without bail	<ol style="list-style-type: none"> 1. Offense charged is violation of an ordinance, light felony or a criminal offense, the imposable penalty wherefore does not exceed 6 months of imprisonment and/or fine of P 2,000 under R.A.6036; 2. Where the accused has applied for probation and before the same has been resolved but no bail was filed or the accused is incapable of filing one, in which case he may be released on recognizance; 3. In case of a youthful offender held for physical or mental examination, trial or appeal, if unable to furnish bail and under the circumstances under PD 603, as amended; 4. A person who has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, without prejudice to the continuation of the trial or the proceedings on appeal; <p>A person accused of an offense with a maximum penalty of <i>destierro</i> shall be released after 30 days of preventive imprisonment.</p>
On reduced bail or on his own recognizance	<p>A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the indeterminate sentence law or any modifying circumstance shall be released on reduced bail or on his own recognizance, at the discernment of the court.</p>

Under the Revised Rules on Summary Procedure	<p>General Rule: NO bail</p> <p>Exception:</p> <ol style="list-style-type: none"> 1. When a warrant of arrest is issued for failure to appear when required by the court; 2. When the accused <ul style="list-style-type: none"> • Is a recidivist; • Is a fugitive from justice; • Is charged with physical injuries; • Does not reside in the place where the violation of the law or ordinance is committed; or • Has no known residence
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SECTION 17. BAIL, WHERE FILED

1. May be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial court judge, or any inferior court judge in the province, city, or municipality;
 - Despite the filing of a notice of appeal, it may still be filed before the trial court, provided it has not transmitted the original record to the appellate court (Sec. 5, Rule 114)
2. If the accused is arrested in a province, city or municipality OTHER THAN where the case is pending, bail may also be filed with any regional trial court of the said place, or if no judge thereof is available, with any inferior court judge therein;
3. Whenever the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may be filed only in the particular court where the case is pending, whether on trial or appeal (AS amended by AM No. 05-8-26-SC);
4. Any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held;
5. If the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.
 - A judge presiding in one branch has no power to grant bail to an accused who is being tried in another branch presided by another judge who is not absent or unavailable, and his act of releasing him on bail constitutes ignorance of law which

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subjects him to disciplinary sanction.

SECTION 18. NOTICE OF APPLICATION TO PROSECUTOR

The rule makes no distinction whether bail is a matter of right or of discretion. In all instances, reasonable notice of hearing is required to be given to the prosecutor, or at least he must be asked for his recommendation (*Chin vs. Judge Gustilo*, A.M. No. RTJ-94-1243, August 11, 1995).

- Such notice is necessary because the burden of proving that the evidence of guilt is strong is on the prosecution and that the discretion of the court in admitting the accused to bail can only be exercised after the fiscal has been heard regarding the nature of the evidence in his possession (*People vs. Raba*, G.R. No. L-10724, April 21, 1958).

Note: A warrant of arrest without recommendation for bail is a violation of the constitutional right of the accused to bail unless the accused is charged with offenses punishable by *reclusion perpetua* or higher and the evidence of guilt is strong (*Parada v. Veneracio*, A.M. No. RTJ-96-1353).

SECTION 19. RELEASE ON BAIL

- Once the accused has been admitted to bail, he is entitled to immediate release from custody. An officer who fails or refuses to release him from detention notwithstanding the approval by the proper court of his bail bond may be held liable under *Article 126* of the Revised Penal Code for delaying release.
- Where bail is filed in court other than where the case is pending, the judge who accepted the bail shall forward it together with the order of release and other supporting papers, to the court where the case is pending.

SECTION 20. INCREASE OR REDUCTION OF BAIL

- When the amount of bail is increased, the accused may be committed to custody if he does not give bail in the increased amount within a reasonable period.
- An accused released without bail upon filing of the complaint or information may, at any subsequent stage of the proceedings and whenever a strong showing of guilt appears to the court, be required to give bail in the amount fixed, or

in lieu thereof, committed to custody.

- The guidelines provided for in *Section 9, Rule 114* in fixing the amount of bail are also applicable in reducing or increasing the bail previously fixed.

Note: Where the offense is bailable as a matter of right, the mere probability that the accused will escape, or even if he had previously escaped while under detention, does not deprive him of his right to bail. The remedy is to INCREASE the amount of the bail, provided such amount would not be excessive (*Sy Guan vs. Amparo*, 79 Phil 670).

SECTION 21. FORFEITURE OF BAIL

Within thirty (30) days from the failure of the accused to appear in person as required, the bondsmen must:

- PRODUCE the body of their principal or give the reason for his non-production; and
- EXPLAIN why the accused did not appear before the court when first required to do so.

Failing in these requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of bail.

- Court may mitigate the liability of bondsman if the accused has been surrendered or is acquitted.

Note: The 30-day period granted to the bondsmen to comply with the two requisites for the lifting of the order of forfeiture cannot be shortened by the court but may be extended for good cause shown.

Order of Forfeiture	Order of Confiscation
Conditional and interlocutory. It is not appealable.	Not independent of the order of forfeiture. It is a judgment ultimately determining the liability of the surety thereunder and therefore final. Execution may issue at once.

SECTION 22. CANCELLATION OF BAIL

Bail is cancelled:

1. Upon application of the bondsmen with due notice to the prosecutor upon surrender of the accused or proof of his death.
2. Upon acquittal of the accused.
3. Upon dismissal of the case; or
4. Execution of judgment of conviction.

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Without prejudice to any liability on the bail.

SECTION 23. ARREST OF ACCUSED OUT ON BAIL

Methods by which Sureties may relieve themselves from responsibilities:

1. Arrest the principal and deliver him to the proper authorities;
2. They may cause his arrest to be made by any police officer or other person of suitable age or discretion; or
3. By endorsing the authority to arrest upon a certified copy of the undertaking and delivering it to such officer or person.

Note: An accused released on bail may be re-arrested without a warrant if he attempts to depart from the Philippines without prior permission of the court where the case is pending.

Hold-Departure Orders

Supreme Court Circular No. 39-97 dated June 19, 1997 limits the authority to issue hold departure orders to the RTCs in criminal cases within their exclusive jurisdiction. Consequently, MTC judges have no authority to issue nor cancel hold-departure orders.

- Furthermore, the proper court may issue a hold-departure order or direct the Department of Foreign Affairs to cancel the passport of the accused. This is a case of a valid restriction on a person's right to travel so that he may be dealt with in accordance with the law (*Silverio vs. CA, G.R. No. 94284, April 08, 1991*).
- Permission to leave the country should be filed in the same court where the case is pending because they are in the best position to judge the propriety and implication of the same.

SECTION 24. NO BAIL AFTER FINAL JUDGMENT; EXCEPTION

General Rule: No bail shall be allowed after the judgment has become final, as what is left is for him to serve the sentence.

Exception: When he has applied for probation before commencing to serve sentence, the penalty and the offense being within the purview of the Probation Law. The application for probation must be filed within the period of perfecting an appeal. Such filing operates as a waiver of the right to appeal.

Exception to the Exception: The accused shall not be allowed to be released on bail after he has commenced to serve his sentence.

- No bail shall be granted after judgment, if the case has become final even if continued confinement of the accused would be detrimental or dangerous to his health. The remedy would be to submit him to medical treatment or hospitalization.

SECTION 25. COURT SUPERVISION OF DETAINEES

- The court shall exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention. The executive judges of RTCs shall conduct monthly personal inspections of provincial, city and municipal jails and the prisoners within their respective jurisdictions.
- The employment of physical, psychological or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law (*Section 19(2), Article III, 1987 Constitution*).

SECTION 26. BAIL NOT A BAR TO OBJECTIONS ON ILLEGAL ARREST, LACK OF OR IRREGULAR PRELIMINARY INVESTIGATION

An Application for or Admission to Bail shall NOT bar the Accused from challenging:

1. The validity of his arrest; or
2. The legality of the warrant issued therefore; or
3. The regularity of questioning the absence of preliminary investigation or charge against him.

- Provided that the accused raises them before entering his plea.
- The court shall observe the matter as early as practicable, but not later than the start of the trial of the case.

SECTION 27. RIGHTS OF THE ACCUSED

This rule enumerates the rights of a person accused of an offense, which are both constitutional as well as statutory, save the right to appeal, which is purely statutory in character.

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Elements of Criminal Due Process

1. Accused must have been heard in a court of competent jurisdiction;
2. Accused is proceeded against under the orderly processes of law;
3. He has been given notice and opportunity to be heard;
4. The judgment was awarded within the authority of a constitutional law. (*Mejia vs. Pamaran*, G.R. No. L-57469, April 15, 1988)

SECTION 1. RIGHTS OF THE ACCUSED AT THE TRIAL

I. TO BE PRESUMED INNOCENT

In all criminal prosecutions, the accused is presumed innocent until the contrary is proved beyond reasonable doubt.

Reason for the Presumption of Innocence: it is based on the principle of justice. The conviction must be based on moral certainty, for it is better to acquit a guilty person rather than convict an innocent man (*People v. Dramayo*, 42 SCRA 60).

Reasonable Doubt is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt.

Note: Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense (*People vs. Dramayo*, G.R. No. L-23444, October 29, 1971).

Ratio: The slightest possibility of an innocent man being convicted for an offense he has not committed would be far more dreadful than letting a guilty person go unpunished for a crime he may have perpetrated (*People vs. Lagmay*, G.R. No. 125310, April 21, 1999).

Note: *Equipoise Rule* provides that where the evidence of the parties in a criminal case are evenly balanced, the constitutional presumption of innocence should tilt in favor of the accused who must be acquitted.

The legislature may enact that when certain facts have been proved, they shall

be *prima facie* evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a *rational connection* between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the other is not an unreasonable and arbitrary experience (*People vs. Mingoa*, G.R. No. L-5371, March 26, 1953).

Examples:

1. Unexplained flight of the accused;
2. Failure to explain possession of stolen property (*US. Vs. Espia*, G.R. No. 5813, 1910);
3. Failure to account funds and property of a public officer entrusted to him.
 - In cases of self defense, the person who invokes self defense is presumed guilty. In this case a REVERSE TRIAL will be held.

II. TO BE INFORMED OF THE NATURE AND THE CAUSE OF THE ACCUSATION AGAINST HIM

Means of informing the accused of the charge:

1. Preliminary investigation;
2. Requirement of sufficient allegations in information or complaint;
3. Arraignment;
4. Bill of particulars;
5. Rules against duplicity of offense.

General Rule: An accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right (*People vs. Ortega*, G.R. No. 116736, July 27, 1997).

Exception: An information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during trial and the deficiency was cured by competent evidence presented therein (*People v. Palarca*, G.R. No. 146020, May 29, 2002; *People v. Orbita*, G.R. No. 136591, July 1, 2002). This is considered a waiver of his constitutional right.

- This right requires that the information should state the facts and the circumstances constituting the crime charged in such a way that a person of common understanding may easily

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comprehend and be informed of what it is about.

- When a person is charged in a complaint with a crime and the evidence does not show that he is guilty thereof, but does show that he is guilty of some other crime or a lesser offense, the court may sentence him for the lesser offense, PROVIDED, the lesser offense is a cognate offense and is included in the complaint with the court.
- The qualifying or aggravating circumstances must be ALLEGED and PROVED in order to be considered by the court.
- The description not the designation of the offense is *controlling*. In case of error in the designation, accused may be validly convicted of the offense described.

III. TO BE PRESENT AND DEFEND IN PERSON AND BY COUNSEL AT EVERY STAGE OF THE PROCEEDING.

The presence of the Accused is required only:

1. During arraignment (*Sec. 1b, Rule 116*);
2. Promulgation of sentence *except* when the conviction is for a light offense, in which case, it may be pronounced in the presence of his counsel or a representative;
3. When ordered by the court for purposes of identification.

Not applicable in SC and CA

The law securing to an accused person the right to be present at every stage of the proceedings has no application to the proceedings before the Court of Appeals and the Supreme Court nor to the entry and promulgation of their judgments. The defendant need not be present in court during the hearing of the appeal (*Sec. 9 Rule 124*).

Accused may waive his right to be present during the trial. HOWEVER, his presence may be compelled when he is to be identified (*Aquino, Jr. vs. Military Commission, G.R. No. L-37364, May 9, 1975*).

Requirements of Waiver:

1. Existence of the right;
2. Knowledge of the existence thereof;
3. Intention to relinquish which must be

shown clearly and convincingly;

4. Where the Constitution or law provides, it must be with the assistance of counsel to be valid.

Effects of Waiver of the Right to Appear by the Accused:

1. Waiver of the right to present evidence and cross-examine witnesses;
2. Prosecution can present evidence if accused fails to appear;
3. The court can decide without accused's evidence.

Trial in Absentia

It is important to state that the provision of the Constitution authorizing the trial *in absentia* of the accused in case of his non-appearance AFTER ARRAIGNMENT despite due notice simply means that he thereby waives his right to meet the witnesses face to face among others.

- Such waiver of a right of the accused does not mean a release of the accused from his obligation under the bond to appear in court whenever so required. The accused may waive his right but not his duty or obligation to the court.

Requirements for Trial in Absentia:

1. The accused has been arraigned;
2. He has been duly notified of the trial;
3. His failure to appear is unjustified.

- An escapee who has been duly tried *in absentia* waives his right to present evidence on his own behalf and to confront and cross-examine witnesses who testified against him (*Gimenez vs. Nazareno, G.R. No. L-37974, April 15, 1988*).

RIGHT TO COUNSEL

The right to counsel is absolute and may be invoked at all times even on appeal (*Talan vs. CA, G.R. No. 95026, Oct. 30, 1997*). Without the aid of counsel, a person may be convicted not because he is guilty but because he does not know how to establish his innocence.

- The right covers the period beginning from custodial investigation, well into the rendition of the judgment and even on appeal (*People vs. Serzo, Jr., G.R. No. 118435, June 20, 1997*).

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Note: While the right to counsel is absolute, the right to counsel de parte is not (*People vs. Serzo*, G.R. No. 118435, June 20, 1997).

Difference between the Right to Counsel during Arraignment and during the Trial:

1. **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.
2. **During Trial** - It is the accused who must assert his right to counsel. The court will not act unless the accused invokes his rights.

Custodial Investigation is the questioning by law enforcement officers of a suspect taken into custody or otherwise deprived of his freedom of action in a significant way. It includes the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed (RA 7438).

Difference between the Right to Counsel during Custodial Investigation and during the Trial:

1. **During trial** - the right to counsel means EFFECTIVE counsel. Counsel is here not to prevent the accused from confessing but to defend the accused.
2. **Custodial Investigation** - stricter requirement, it requires the presence of competent and independent counsel who is preferably the choice of the accused. Since a custodial investigation is not done in public there is a danger that confessions can be exacted against the will of the accused.

Note: The constitutional provision on custodial investigation does not apply to a spontaneous statement, not elicited through questioning by the authorities but given in an ordinary manner whereby the suspect orally admits having committed the crime. It does not also apply to an admission or confession made before he is placed

under investigation (*People v. Baloloy*, G.R. No. 140740, April 12, 2002).

Confessions made without the assistance of counsel are not admissible as evidence to incriminate the accused BUT they may be used to impeach the credibility of the accused (*Harris v. New York*, 401 U.S. 222 [1971]), or they may be treated as verbal admission of the accused through the testimony of the persons who heard it or who conducted the investigation of the accused (*People v. Molas* G.R. Nos. 97437-39, February 5, 1993).

The assisting lawyer, by his failure to inform appellant of the latter's right to remain silent, by his "coming and going" during the custodial investigation, and by his abrupt departure before the termination of the proceedings, can hardly be the counsel that the framers of the 1987 Constitution contemplated when it added the modifier "competent" to the word "counsel." Thus, the statement signed by the accused is *still inadmissible* because the lawyer should assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession (*People vs. Morial*, G.R. No. 128177, August 15, 2001).

A person under investigation has the right to be aided by a counsel "preferably of his choice". The word "preferably" does not convey the message that the choice is exclusive so as to preclude other equally competent and independent attorneys handling the case. Otherwise, the tempo of a custodial investigation will be solely in the hands of an accused by stubbornly insisting to be represented by a lawyer who, for one reason or another, is not available to protect his interest (*People v. Barasina*, 47 SCAD 399, G.R. No. 109993, January 21, 1994).

Note: The right to counsel and the right to remain silent do not cease even after a criminal complaint/information has already been filed against the accused, as long as he is still in custody (*People*

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vs. Maqueda, G.R. No. 112983, March 22, 1995).

The duty of the court to appoint a counsel *de officio* when the accused has no legal counsel of choice and desires to employ the services of one is MANDATORY only at the time of arraignment (*Sec. 6 Rule 116*).

Consequence of Denial of Right to Counsel

In *Sps. Telan vs. Court of Appeals* (G.R. No. 95026, October 4, 1991), the Court held that an accused was deprived of his right to counsel when he retained the services of a person who misrepresented himself as a lawyer. Retrial was ordered on the ground of denial of constitutional right to counsel.

IV. TO TESTIFY AS WITNESS IN HIS OWN BEHALF

- A denial of the defendant's right to testify in his behalf would constitute an unjustifiable violation of his constitutional right.
- If the accused testifies, he may be cross-examined but ONLY on matters covered by his direct examination, unlike an ordinary witness who can be cross-examined as to any matter stated in the direct examination or connected therewith (*Section 6, Rule 132*). His failure to testify is not taken against him but failure to produce evidence in his behalf is considered against him.

V. TO BE EXEMPT FROM BEING COMPELLED TO BE A WITNESS AGAINST HIMSELF

Right Against Self-Incrimination

The accused is protected under this rule from questions which tend to incriminate him, that is, which may subject him to penal liability.

Note: The right may be waived by the failure of the accused to invoke the privilege at the proper time, that is, AFTER the incriminating question is asked and before his answer.

Right of the Accused vs. Right of an Ordinary Witness

The ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him, while an accused may altogether refuse to take the witness stand and refuse to answer any and all questions.

Note: However, if the accused testifies in his own behalf, then he may be cross-examined as any other witness. This is considered a waiver of his right against self-incrimination. He may NOT on cross examination refuse to answer any question on the ground that the answer that he will give, or the evidence he will produce would have the tendency to incriminate him for the crime with which he is charged. But he MAY refuse to answer any question incriminating him for an offense DISTINCT from that for which he is charged.

Incriminating Question: That which may subject him to penal liability

Scope Covered by the Right

The privilege of the accused to be exempt from testifying as a witness involves a prohibition against testimonial compulsion only and the production by the accused of incriminating documents, and articles demanded from him.

It does not cover examination of his body as evidence, when it may be material:

1. Physical examination;
 2. Examination of a rapist and the victim for gonorrhea is valid;
 3. Examination of a woman for pregnancy charged with adultery is valid (*Villaflores vs. Summers, G.R. No. 15975, September 7, 1920*);
 4. Undergo ultraviolet light for examination of presence of fluorescent powder dusted on marked money used in buy-bust (*People vs. Tranca, G.R. No. 110357, August 17, 1994*).
- Furnishing of specimen of signature in a falsification of document case is covered by the right because writing is not purely a mechanical act for it involves the application of intelligence and attention (*Beltran vs. Samson, G.R. No. 32025, September 23, 1929*).

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The right does include cases covered by immunity statutes such as:

1. RA 1379 – Forfeiture of Illegally Obtained Wealth;
2. RA 749 – Bribery and Graft Cases.

Where Available: Not only in criminal but also in government proceedings, civil, administrative proceedings where there is a penal sanction involved.

Rationale for protecting the right against self-incrimination:

1. Humanitarian reasons - to prevent the state from using its coercive powers;
 2. Practical reasons – the accused is more likely to commit perjury
- Questions on past criminal liability for which he may still be prosecuted are covered by the right against self-incrimination. If he cannot be prosecuted therefor, he may not invoke such right.
 - DNA samples obtained from an accused in a criminal case will not violate the rights against self-incrimination. This privilege applies to evidence that is "communicative" in essence taken under duress (*Herrera v. Alba, et al.*, G.R. No.148220, June 15, 2005, citing *People v. Olvis*, G.R. No. L-71092, September 30, 1987)

The taking of the accused of the witness stand is a waiver of the right against self-incrimination on cross-examination with respect to the offense in question. But if the examination incriminates him with other offenses, then, he can invoke the right.

Rights of the Accused in the matter of Testifying or Producing Evidence

Before the case:

1. Right to be informed.
2. Right to remain silent and to counsel.
3. Right not to be subjected to force or violence or any other means which vitiate free will.
4. Right to have the evidence obtained in violation of these rights rejected.

After the case is filed in court:

1. Right to refuse to be a witness.
2. Right to not have any prejudice whatsoever result to him by such refusal.

3. The right to testify on his own behalf subject to cross-examination by the prosecution.
4. While testifying the right to refuse a specific question which tends to incriminate him for some other crime.

Two types of Immunity

Use Immunity	Transactional Immunity
Witness' compelled testimony and the fruits thereof cannot be used in subsequent prosecution of a crime against him.	Witness immune from prosecution of a crime to which his compelled testimony relates.
Witness can still be prosecuted but the compelled testimony cannot be used against him.	Witness cannot be prosecuted at all.

Effect of Refusal of Accused to Testify:

General Rule: Silence should not prejudice the accused.

Exception: Unfavorable inference is drawn when:

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

VI. TO CONFRONT AND CROSS- EXAMINE THE WITNESSES AGAINST HIM AT TRIAL

Confrontation is the act of setting a witness face-to-face with the accused so that the latter may make any objection he has to the witness, and the witness may identify the accused, and this must take place in the presence of the court having jurisdiction to permit the privilege of cross-examination.

Purpose: The primary purpose is to secure the opportunity of cross-examination and the secondary purpose is to enable the judge to observe the demeanor of witnesses.

- By way of an **exception** to this rule, it is provided that either party may utilize as part of its evidence the testimony of

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a witness who is deceased, out of the country or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the OPPORTUNITY TO CROSS-EXAMINE him. (Rule 130, Sec. 47)

Right May Be Waived

When a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination will be allowed to remain in the record (*People vs. Caparas, G.R. No. L-47988, February 20, 1981*).

- In any criminal proceeding, the defendant enjoys the right to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

VII. TO HAVE COMPULSORY PROCESS

This 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.

If a witness refuses to testify when required is in contempt of court. The court may order a witness to give bail or to be arrested.

Purpose: To assure a full and unimpeded opportunity for him to meet what in the end could be a baseless suit or accusation.

Processes which May Be Resorted To, To Compel the Attendance of a Person in Court:

1. Subpoena (ROC, Rule 21);
2. Subpoena duces tecum (ROC, Rule 21);
3. Warrant of arrest;
4. Contempt;
5. Perpetuation of testimony;
6. Modes of discovery.

VIII. TO HAVE A SPEEDY, IMPARTIAL AND PUBLIC TRIAL

The right to a speedy trial is intended to avoid oppression and to prevent delay by imposing on the courts and on the

prosecution an obligation to proceed with reasonable dispatch.

Facts considered to determine if right to speedy trial has been violated:

1. Conduct of the parties (*Martin v. Ver, 123 SCRA 745*);
2. Length of the delay;
3. Reason for the delay;
4. The accused's assertion or non-assertion of the right;
5. Prejudice to the accused resulting from the delay.

Note: There is NO violation of the right where the delay is imputable to the accused (*Solis vs. Agloro, A.M. No. 276-MJ, June 27, 1975*). This is because when the accused resorted to such tactical maneuvers, he waived his right to speedy trial (*People v. Jardin, 126 SCRA 167*).

Remedies available to the accused when his Right to a Speedy Trial is violated:

1. Accused may file a motion to dismiss on the ground of violation of right to speedy trial (Sec. 13, RA 8493);
2. Accused may file a petition for habeas corpus if the unreasonable delay of the trial results to illegal restraint of his liberty (*Abadia v. Court of Appeal, G.R. No. 105597, September 23, 1994*);
3. Accused would be entitled to relief in a mandamus proceeding to compel the dismissal of the information (*Esguerra v. De La Costa, 66 Phil. 134 [1938]*).

Effect of dismissal for violation of accused's right to a speedy trial

Such dismissal is equivalent to an acquittal. Any attempt to prosecute the accused for the same offense will violate his constitutional right against being twice put in jeopardy of punishment for the same offense (*Salcedo v. Martinez, 88 SCRA 811*).

THE SPEEDY TRIAL ACT OF 1998 (RA 8493)

Duty of the court after arraignment of an accused

The Court SHALL order a pre-trial conference to consider the following:

1. Plea bargaining;
2. Stipulation of facts;
3. Marking for identification of evidence of parties;
4. Waiver of objections to admissibility of

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- evidence; and
5. Such other matter as will promote a fair and expeditious trial.

Time limit for the trial of criminal cases:
SHALL NOT EXCEED 180 days from the first day of trial.

Exceptions:

1. Those governed by the Rules on Summary Procedure; or
2. Where the penalty prescribed by law DOES NOT EXCEED 6 months imprisonment or a fine of P1,000 or both;
3. Those authorized by the Chief Justice of the SC.

The time limits set by the Speedy Trial Act of 1998 do not preclude justifiable postponements and delays when so warranted by the situation (*Domondon v. Sandiganbayan*, 476 SCRA 496).

Period for Arraignment of the Accused

Within Thirty (30) days from the filing of the information, or from the date the accused appealed before the justice/judge/court in which the charge is pending; whichever date last occurs.

When shall trial commence after arraignment

Within Thirty (30) days from arraignment,

Impartial Trial

Due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge (*Mateo, Jr. vs. Villaluz*, G.R. Nos. L-34756-59, March 31, 1973).

- To disqualify a judge on the ground of bias and prejudice, the movant must prove such bias by clear and convincing evidence (*Webb vs. People*, G.R. No. 127262, July 24, 1997).

Public Trial - one held openly or publicly; it is sufficient that the relatives and friends who want to watch the proceedings are given the opportunity to witness the proceedings.

Exclusion of the public is valid when:

1. Evidence to be produced is offensive to decency or public morals (Sec. 13, Rule 119);

2. Upon motion of the accused (Sec. 21, Rule 119).

Rule on Trial by Publicity

The right of the accused to a fair trial is not incompatible to a free press. Pervasive publicity is not *per se* prejudicial to the right to a fair trial. 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 (*People vs. Teehankee*, J.R. Nos. 111206-08, Oct. 06, 1995).

IX. TO APPEAL ON ALL CASES ALLOWED BY LAW AND IN THE MANNER PRESCRIBED BY LAW

The right to appeal from a judgment of conviction is fundamentally of statutory origin. It is not a natural right and it may be denied by the legislature as long as hearing is conducted except the appellate jurisdiction of the Supreme Court which Congress cannot remove. But if there is a statutory grant of appeal, denial of the same is a violation of due process.

Waiver of the Right to Appeal

The right to appeal is personal to the accused and similarly to other rights of kindred nature, it may be waived either expressly or by implication. HOWEVER, where the death penalty is imposed, such right cannot be waived as the review of the judgment by the SUPREME COURT is automatic and mandatory (A.M. NO. 00-5-03-SC).

Note: The SC in *People vs. Mateo* (GR No. 147678-87, June 7, 2004) ruled that the mandatory review of cases in which the death penalty is imposed shall pass through an initial review by the Court of Appeals.

RULE 116: ARRAIGNMENT AND PLEA

SECTION 1. ARRAIGNMENT AND PLEA; HOW MADE

Arraignment is the formal mode of implementing the constitutional right of the accused to be informed of the nature of the accusation against him.

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Where and how made:

1. In open court where the complaint or information has been filed or assigned for trial;
2. By the judge or clerk of court;
3. By furnishing the accused with a copy of the complaint or information;
4. Reading it in a language or dialect known to the accused;
5. Asking accused whether he pleads guilty or not guilty.
6. Both arraignment and plea shall be made of record but failure to enter of record shall not affect the validity of the proceedings.

When arraignment is held within a shorter period:

1. When an accused is under preventive detention, his case should be raffled within 3 days from filing and accused shall be arraigned within 10 days from receipt by the judge of the records of the case (RA 8493 Speedy Trial Act).
2. Where the complainant is about to depart from the Philippines with no definite date of return, the accused should be arraigned without delay (RA 4908).
3. Cases under RA 7610 (Child Abuse Act), the trial shall be commenced within 3 days from arraignment.
4. Cases under the Dangerous Drugs Act.
5. Cases under SC AO 104-96, i.e., heinous crimes, violations of the Intellectual Property Rights law, these cases must be tried continuously until terminated within 60 days from commencement of the trial and to be decided within 30 days from the submission of the case.

Rules on Arraignment:

1. Trial in absentia may be conducted only after valid arraignment.
 2. Accused must personally appear during arraignment and enter his plea (counsel cannot enter plea for accused).
 3. Accused is presumed to have been validly arraigned in the absence of proof to the contrary.
 4. Generally, judgment is void if accused has not been validly arraigned.
 5. If accused went into trial without being arraigned, subsequent arraignment will cure the error provided that the accused was able to present evidence and cross-examine the witnesses of the prosecution during trial.
- If an information is amended in substance which changes the nature of the offense, arraignment on the amended information is **MANDATORY**, **except** if the

amendment is only as to form (*Teehankee Jr. vs. Madayag*, G.R. No. 103102, Mar. 06, 1992).

Plea pertains to the matter which the accused, on his arraignment, alleges in answer to the charge against him.

Period to Plea

1. 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 and the accused arraigned within 10 days from the date of the raffle. The pre-trial conference of his case shall be held within 10 days after arraignment;

2. When the accused is NOT under preventive detention:

Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held 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 bill of particulars, or other causes justifying suspension of the arraignment, shall be excluded in computing the period.

When should a plea of not guilty be entered:

1. When the accused so pleaded;
2. When he refuses to plead;
3. Where in admitting the act charged, he sets up matters of defense or with lawful justification;
4. When he enters a conditional plea of guilty;
5. When the plea is indefinite or ambiguous.

Generally, an unconditional plea of guilty admits of the crime and all the attendant circumstances alleged in the information including the allegations of conspiracy and warrants of judgment of conviction without need of further evidence.

- Plea of guilty is mitigating if it is made before prosecution starts to present evidence.

Except:

1. Where the plea of guilty was compelled by violence or intimidation;
2. When the accused did not fully understand the meaning and consequences of his plea;
3. Where the information is insufficient to

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- sustain conviction of the offense charged;
4. Where the information does not charge an offense, any conviction thereunder being void;
 5. Where the court has no jurisdiction.

Presence of the Offended Party

The private offended party shall be required to appear in the arraignment for the purpose of

1. Plea bargaining,
 2. Determination of civil liability and
 3. Other matters requiring his presence.
- In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone.

When there is a defect in the information

The judge has **no obligation** to point out that an information is duplicitous or to point out any other defect in an information during the 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 (*People v. Bartulay*, G.R. No. 83696, December 21, 1990).

Presumption that accused was arraigned

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 duly arraigned in the absence of anything to indicate the contrary (*People vs. Colman*, G.R. Nos. L-6652-54, Feb. 28, 1958).

Exception:

When the offense charged is punishable by death (*People vs. Alicando*, G.R. No. 117487, Dec. 13, 1995).

Note: A mere written manifestation is not a valid plea.

SECTION 2. PLEA OF GUILTY TO A LESSER OFFENSE

An accused may enter a plea of guilty to a lesser offense. PROVIDED, that there is

1. Consent of the offended party and
 2. The prosecutor to the plea of guilty
 3. To a lesser offense which is necessarily included in the offense charged.
- If the accused entered a plea to a lesser offense WITHOUT the consent of the offended party and the prosecutor AND he was convicted, his subsequent conviction

of the crime charged would NOT place him in Double Jeopardy.

- After arraignment but BEFORE trial, the accused may still be allowed to plead guilty to a lesser offense after withdrawing his plea of not guilty. In this plea of guilty to a lesser offense, no amendment of the complaint or information is necessary.

DOJ Circular on Consent of Prosecutor

When the penalty imposable for the offense charged is *prision mayor* or higher or a fine exceeding Php12,000, the trial prosecutor must secure the consent in writing of the City/Provincial Prosecutor or the Chief State Prosecutor (*DOJ Circular No. 55, Mar. 11, 1996*).

Note: A plea of guilty to a lesser offense after prosecution rests is allowed only when the prosecution does not have sufficient evidence to establish guilt for the crime charged (*People vs. Villarama*, G.R. No. 99287, June 23, 1992).

SECTION 3. PLEA OF GUILTY TO CAPITAL OFFENSE; RECEPTION OF EVIDENCE

When the accused pleads guilty to a capital offense, the court shall:

1. Conduct a searching inquiry into the:
 - a. Voluntariness of the plea; and
 - b. Full comprehension of the consequences of his plea;
2. Require the prosecution to prove his guilt and the precise degree of his culpability;
3. Ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires. HOWEVER, the defendant, after pleading guilty, may not present evidence as would exonerate him completely from criminal liability such as proof of self-defense.

Searching Inquiry (*People v. Dayan*, G.R. No. 88294, July 20, 1990)

The trial judge must satisfy himself that the accused, in pleading guilty, is doing so voluntarily, and (2) he, in so doing, is truly guilty, and (3) that there exists a rational basis for a finding of guilt, based on his testimony.

It means more than merely informing the accused that he faces a jail term but also informing him the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony.

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The judge must see to it that the accused is not under the false impression that a plea of guilty carries with it a lenient treatment or a lighter treatment because his admission shows remorse on his part.

SECTION 4. PLEA OF GUILTY TO NON-CAPITAL OFFENSE; RECEPTION OF EVIDENCE, DISCRETIONARY

Consequences of Plea of Guilty

As a rule, a plea of guilty constitutes an unqualified admission of the crime and of the attendant circumstances alleged in the information and may thus be the basis of a judgment without the need of evidence to prove the same. However, the court may, upon motion, allow the presentation of evidence to prove mitigating circumstances.

Failure to Charge an Offense (for both Capital and Non-Capital Offenses)

Where the facts charged in the information do not state an offense, no conviction thereon can be had notwithstanding the defendant's plea of guilty.

Guilty Plea: Non-capital v. Capital

For non-capital offenses, the reception of evidence is merely discretionary on the part of the court. If the information or complaint is sufficient for the judge to render judgment on a non-capital offense, he may do so. But if the case involves a capital offense, the reception of evidence to prove the guilt and degree of culpability of the accused is mandatory.

SECTION 5. WITHDRAWAL OF IMPROVIDENT PLEA OF GUILTY

Plea of Guilty is an unconditional admission of guilt, freely, voluntarily and made with full knowledge of the consequences and meaning of his act and with a clear understanding of the precise nature of the crime charged in the complaint or information (*People v. De Luna*, G.R. No. 77969, June 22, 1989).

It must be of such nature as to foreclose the defendant's right to defend himself from said charge, leaving the court no alternative but to impose the penalty fixed by law (*People vs. Ng Pek*, G.R. No. L-1895, Oct. 02, 1948).

Improvident Plea

It is a plea without information as to all the circumstances affecting it; based upon a mistaken assumption or misleading information or advice.

Effect of Improvident Plea

The conviction will be set aside if the plea of guilty is the sole basis for the judgment. However, the court may validly convict the accused if such conviction is supported by adequate evidence of guilt independent of the plea itself (*People v. Derilo*, G.R. No. 117818, April 18, 1997).

Note: At any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty.

- The withdrawal of a plea of guilty is not a matter of right to the accused but of sound discretion to the trial court (*People vs. Lambrino*, G.R. No. L-10845, April 28, 1958).

Effect of Withdrawal: Setting aside of the judgment of conviction and the re-opening of the case for new trial.

SECTION 6. DUTY OF THE COURT TO INFORM ACCUSED OF HIS RIGHT TO COUNSEL

Duties of the court when the accused appears before it without counsel

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

Note: Failure to comply with this duty is a denial of due process (*People vs. Holgado*, G.R. No. L-1990, March 15, 1950).

SECTION 7. APPOINTMENT OF COUNSEL DE OFFICIO

Purpose: To secure to the accused, who is unable to engage the services of an attorney of his own choice, effective representation by making it imperative on the part of the court to consider in the appointment of counsel *de officio*, the gravity of the offense and the difficulty of the questions likely to arise in the case vis-à-vis the ability and experience of the prospective appointee.

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Counsel De Officio

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

Who may be appointed Counsel de Officio:

1. Such members of the bar in good standing who can competently defend the accused;
2. In localities where such members of the bar are not available, any resident of the province of good repute for probity and ability.

Note: A private prosecutor, who assisted the prosecuting attorney in prosecution against one defendant, is disqualified from acting as counsel de officio for the other defendants in the same case.

HOWEVER, although the attorney appointed as counsel de officio had previously appeared as private prosecutor in the case, if it appears that the accused were properly defended, the appointment, if it be erroneous, is not a reversible error (*People vs. Manigbas*, G.R. No. L-10352-53, Sept. 30, 1960).

SECTION 8. TIME FOR COUNSEL DE OFFICIO TO PREPARE FOR ARRAIGNMENT

What Constitutes "Reasonable Time"

- It depends on the circumstances surrounding the case such as the gravity of the offense, complexity of the allegations, whether a motion to quash or a bill of particulars has to be filed, etc.
- Generally, a reasonable time to prepare for trial is 2-15 days.
- Generally, a reasonable time to prepare for arraignment is 30 minutes to 1 hour.

Note: Counsel for the accused must expressly demand the right to be given reasonable time to consult with the accused. Only when so demanded does denial thereof constitute reversible error and a ground for new trial.

SECTION 9. BILL OF PARTICULARS

Bill of Particulars: It is a more definite statement of any matter which is not averred with sufficient definiteness or particularity to enable properly the movant (*in this case, the accused*) to prepare his responsive pleading. Accused may, AT or BEFORE arraignment, move for a bill of particulars to enable him to properly plead and prepare for trial.

Purpose: In order for the accused to be fully apprised of the true charges against them, and thus avoid any and all possible surprise, which might be detrimental to their rights and interests (*People vs. Abad Santos*, G.R. No. L-447, June 17, 1946).

- Like in civil cases, the bill of particulars here should be considered an integral part of the complaint or information which it supplements.
- The remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a motion for a bill of particulars, not a motion to quash (*Rocaberte vs. People*, G.R. No. 72994, January 23, 1991).
- The failure to ask for a bill of particulars amounts to a waiver of such right and it deprives him of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms which sufficiently charges the defendants with a definite crime (*People vs. Gutierrez*, G.R. No. L-4041, August 30, 1952).

It is **NOT** the office of the bill of particulars to:

1. Supply material allegation necessary to the validity of a pleading.
2. Change a cause of action or defense stated in the pleading, or to state a cause of action or defense other than one stated.
3. Set forth the pleader's theory of his cause of action or a rule of evidence on which he intends to rely.
4. Furnish evidentiary information whether such information consists of evidence which the pleader proposes to introduce or of facts which constitute a defense or offset for the other party or which will enable the opposite party to establish an affirmative defense not pleaded.

Note: Rule 12 on Bills of Particulars applies by analogy to Bill of Particulars in Criminal Proceedings as provided in Sec. 9 of Rule 116.

- The filing of a motion for bill of particulars suspends the period to file a responsive pleading. Upon the service of the bill of particulars, or after the notice of denial of such motion, the movant must file his responsive pleading *within the remaining period, which shall not be less than 5 days* (Sec. 5, Rule 13).

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SECTION 10. PRODUCTION OR INSPECTION OF MATERIAL EVIDENCE IN POSSESSION OF PROSECUTION

Right to Modes of Discovery

Right of the accused to move for the production of 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.

However, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial (*U.S. vs. Agurs*, 437 U.S. 97).

This right is also available during preliminary investigation if it is indispensable to protect his constitutional right to life, liberty, and property (*Webb v. De Leon, et al.*, G.R. No. 121234, 121245, 121297, August 23, 1995).

SECTION 11. SUSPENSION OF ARRAIGNMENT

Grounds for Suspension:

1. The accused appears to be suffering from an UNSOUND MENTAL condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto;
2. There exists a valid PREJUDICIAL QUESTION; and
3. A PETITION FOR REVIEW of the resolution of the prosecutor is pending at the Department of Justice or the Office of the President; provided that the period of suspension shall not exceed 60 days counted from the filing of the petition;
4. There are PENDING INCIDENTS such as:
 - a. A Motion to Quash
 - b. A Motion for Inhibition;
 - c. A Motion for Bill of Particulars

RULE 117. MOTION TO QUASH

Section 1. TIME TO MOVE TO QUASH

Motion to Quash is a special pleading filed by the defendant before entering his plea, which hypothetically admits the truth of the facts spelled out in the complaint or information at the same time that it sets up a matter which, if duly proved, would preclude further proceedings.

Generally, other facts, such as matters of defense, which are not in the information should not be considered.

Exceptions: When the grounds invoked to quash the information are

1. Extinction of criminal liability,
2. Prescription, and
3. Former jeopardy. In these cases, additional facts are allowed.

Additional facts not alleged in the information but admitted or not denied by the prosecution may be invoked in support of the motion to quash.

General Rule: The accused may move to quash the complaint or information at any time BEFORE entering his plea.

Exception: Instances where a motion to quash may be filed AFTER plea:

1. Failure to charge an offense;
2. Lack of jurisdiction over the offense charged;
3. Extinction of the offense or penalty;
4. The defendant would be placed in double jeopardy.

- Right to file a motion to quash belongs only to the accused. There is nothing in the rules which authorizes the court or judge to *motu proprio* initiate a motion to quash.

Motion to Quash	Demurrer to Evidence
Filed before the defendant enters his plea	Filed after the prosecution has rested its case
Does not go into the merits of the case but is anchored on matters not directly related to the question of guilt or innocence of the accused.	Based upon the inadequacy of the evidence adduced by the prosecution in support of the accusation.
Governed by Rule 117 of the Rules of Criminal Procedure	Governed by Rule 119 of the Rules of Criminal Procedure

Quashal vs. Nolle Prosequi

The *quashal* of the complaint or information is different from a *nolle prosequi*, although both have one result, which is the dismissal of the case.

A *nolle prosequi* is initiated by the prosecutor while a *quashal* of information is upon motion to quash filed by the accused.

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A *nolle prosequi* is a dismissal of the criminal case by the government before the accused is placed on trial and before he is called to plead, with the approval of the court in the exercise of its judicial discretion. It partakes of the nature of a non-suit or discontinuance in a civil suit and leaves the matter in the same condition in which it was before the commencement of the prosecution. It is not an acquittal; it is not a final disposition of the case; and it does not bar a subsequent prosecution for the same offense.

SECTION 2. FORM AND CONTENTS

Form and contents of a motion to quash

1. In writing;
 2. Signed by the accused or his counsel;
 3. Shall specify distinctly the factual and legal grounds therefore.
- The court shall consider no grounds other than those stated in the motion, **except** lack of jurisdiction over the offense charged and when the information does not charge an offense.

Note: A motion to suspend the issuance of a warrant of arrest should be considered as a motion to quash if the allegations therein are to the effect that the facts charged in the information do not constitute an offense (*People vs. Matondo*, G.R. No. L-12673, February 24, 1961).

Resolution of a Motion to Quash

- A motion to quash must be resolved **BEFORE** trial and cannot defer the hearing and determination of said motion until trial on the merits as it would impair the right of the accused to speedy trial.
- It may also be resolved at the preliminary investigation since the investigating officer has the power to either dismiss the case or bind the accused over for trial by the proper court, depending on its determination of lack or presence of probable cause.

SECTION 3. GROUNDS

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;
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; and
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.

Note: These grounds under *Section 3, Rule 117* are **exclusive** in character. Accordingly, it was held that lack of preliminary investigation is not a ground for a motion to quash, not only because it is not stated by the rule as one of the grounds, but also because lack of preliminary investigation does not impair the validity of the information, does not otherwise render it defective and does not affect the jurisdiction of the court over the case (*People v. Yutilla*, 102 SCRA 264).

A. The Facts Charged do NOT constitute an offense

- The complaint must show on its face that if the facts alleged are true, an offense has been committed. It must state explicitly and directly every fact and circumstance necessary to constitute an offense.
- The test to determine if the facts charged constitute an offense is to determine whether or not all the essential elements of the crime have been alleged. In this examination, matters *aliunde* are not considered. (*Domingo v. Sandiganbayan*, G.R. No. 109367, Jan. 22, 2000)
- The fact that the allegations in the complaint or information are vague or broad is not generally a ground for a motion to quash, the remedy being to file a motion for bill of particulars.

Rule on Negative Averments (See discussion on Sec. 9, Rule 110)

General Rule: When an exception or negative allegation is not an ingredient of the offense and is a matter of defense, it need not be alleged.

Exception: When the ingredients of the offense cannot be accurately and clearly set

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forth if the exemption is omitted, then the information must show that the accused does not fall within the exemptions.

Note: Where the information is void or charges an offense that does not really exist, the presentation of evidence cannot validate said information (*People vs. Asuncion*, G.R. Nos. 83837-42, April 22, 1992).

- B. Lack of Jurisdiction over the offense charged**
- C. Lack of Jurisdiction over the person of the accused**
- D. Want of authority of officer filing the information**

Unauthorized filing of information when the:

1. Officer filing is irregularly appointed. It does not necessarily invalidate the information if he may be considered a *de facto* officer;
2. Officer is disqualified from appointment to such position. The information is invalid and the court does not acquire jurisdiction to try the accused thereon (*Villa vs. Banez*, G.R. No. L-4313, March 20, 1951);
3. Officer filed the information without the approval by the head/Chief prosecutor (Sec. 4, Rule 112);
4. Information is filed without the *complaint* in cases involving private crimes.

An infirmity in the information caused by the lack of authority of the officer signing it cannot be cured by silence, acquiescence, or even by express consent. An invalid information is no information at all. No criminal proceeding may prosper therefrom, thus, it is subject to quashal (*Romualdez v. Sandiganbayan*, G.R. Nos. 143618-41, July 30, 2002).

E. Complaint or Information does not conform to the prescribed form

- It is sufficient if the complaint or information states the essential elements which constitute the offense as required in the statute and it is not necessary to follow the exact language of the statute.
- If such formal defects are properly and opportunely raised, an amendment of the complaint or information may be ordered by the court under Rule 117.

Sec. 4.

F. Duplicity of Offenses Charged

See discussions on Rule 110, Sec. 13.

G. The Criminal Action or liability has been extinguished

Grounds for Extinction of Criminal Liability (Article 89, RPC)

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

Note: Where the last day of the prescriptive period for filing an information is a Sunday or legal holiday, the information can no longer be filed on the next working day. The remedy is for the fiscal or prosecution to file the information on the last working day before the criminal offense prescribes (*Yapdiangco vs. Buencamino*, G.R. No. L-28841, June 24, 1983).

Ratio: Strict Construction of the Law

H. That it contains averments, which if true, would constitute a legal excuse or justification

Examples are the averments of facts constituting:

1. Justifying circumstances
2. Exempting circumstances
3. Mitigating circumstances
4. Absolutory causes

I. Double Jeopardy

See discussions under Rule 117, Sec. 7

SECTION 4. AMENDMENT OF COMPLAINT OR INFORMATION

1. If an alleged defect in the complaint or information, which is the basis of a motion to quash, can be cured by amendment, the court shall order the amendment instead of quashing the complaint or information. If after the amendment, the defect is still not cured, the motion to quash should be granted.

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2. If the motion to quash is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment.

In both instances, the motion to quash shall be granted if:

1. The prosecution fails to make the amendment, or
2. The complaint or information still suffers from the same defect despite amendment.

Note: When the original complaint states a cause of action, but does it so imperfectly, and afterwards an *amended* complaint is filed, correcting the defect, the plea of prescription will relate to the time of the filing of the original complaint.

- There is *nothing* in the rules which authorizes the court or judge to *motu proprio* initiate a motion to quash if no such motion was filed by accused (*People vs. Nitafan*, G.R. Nos. 107964-66, February 1, 1999).

Except: Motion to quash based on *lack of jurisdiction* which may be raised or considered by the court *motu proprio* (*Rosa Uy vs. CA*, G.R. No. 119000, July 28, 1997).

SECTION 5. EFFECT OF SUSTAINING THE MOTION TO QUASH

Effects if Court sustains the Motion to Quash

1. If the ground of the motion is either:
 - a. That the facts charged do not constitute an offense; or
 - b. That the officer who filed the information had no authority to do so; or
 - c. That it does not conform substantially to the prescribed form; or
 - d. That more than one offense is charged,

THEN, the court may order that another information be filed or an amendment thereof be made, as the case may be, within a definite period.

- a. If such order is made, and the accused is in custody, he shall not be discharged unless admitted to bail.
- b. If such order is NOT MADE, or if having been made, another information is NOT FILED within the time specified in the order, or within such time as the court may allow, the accused, if in custody, shall be

discharged therefrom, unless he is also in custody for some other charge.

2. If the motion to quash is sustained upon any of the following grounds:
 - a. That a criminal action or liability has been extinguished;
 - b. That it contains averments which, if true, would constitute a legal excuse or justification; or
 - c. That the accused has been previously convicted or acquitted of the offense charged.
- The court must state, in its order granting the motion, the release of the accused if he is in custody or the cancellation of his bond if he is on bail.

3. If the ground upon which the motion to quash was sustained is that the court has *no jurisdiction over the offense or over the person of the accused*, the better practice is for the court to remand or forward the case to the proper court, not to quash the complaint or information.

Procedure if Motion to Quash is Denied:

1. Accused should plead;
2. Accused should go to trial without prejudice to the special defenses he invoked in the motion;
3. Appeal from the judgment of conviction, if any, and interpose the denial of the motion as an error.

Denial of Motion to Quash

An order denying a motion to quash is INTERLOCUTORY and NOT APPEALABLE. Appeal in due time, as the proper remedy, implies a previous conviction as a result of a trial on the merits of the case and does not apply to an interlocutory order denying a motion to quash (*Acharon vs. Punsima*, G.R. No. 23731, Feb. 26, 1965).

- If the court, in denying the motion to quash, acts without or in excess of jurisdiction or with grave abuse of discretion, then certiorari or prohibition will lie.

Sustaining Motion to Quash

On the other hand, if the motion to quash is granted, the order to that effect is a final order, not merely interlocutory, and is, therefore, appealable at once.

- The accused would not be placed in double jeopardy because there is no

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arraignment yet and the dismissal was obtained with his express consent.

- The question to be passed upon by the appellate court is purely legal so that should the quashal 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.

SECTION 6. ORDER SUSTAINING THE MOTION TO QUASH NOT A BAR TO ANOTHER PROSECUTION

An order SUSTAINING the motion to quash is NOT a bar to another prosecution for the same offense, *UNLESS*:

1. The motion was based on the ground that the criminal action or liability has been extinguished; and
2. 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.

SECTION 7. FORMER CONVICTION OR ACQUITTAL; DOUBLE JEOPARDY

Jeopardy is the peril in which a person is put when he is regularly charged with a crime before a tribunal properly organized and competent to try him.

Double Jeopardy means that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner **without the express consent of the accused**, the latter cannot again be charged with the same or identical offense.

Kinds of Double Jeopardy:

1. No person shall be put twice in jeopardy for the SAME OFFENSE.
2. When an act punished by a law and an ordinance, conviction or acquittal under either shall be a bar to another prosecution for the SAME ACT. (Sec. 21, Art. III, 1987 Constitution)

Requisites for Double Jeopardy under Section 7:

It is necessary in the first case that:

1. The complaint or information or other formal charge was sufficient in form and substance to sustain a conviction;
2. The court had jurisdiction;
3. The accused had been arraigned
4. the accused had entered a valid plea; and

5. He was convicted or acquitted or the case was dismissed without his express consent;

When all these circumstances are present, they constitute a BAR to a second prosecution for:

1. The same offense; or
2. An attempt to commit the said offense; or
3. A frustration of the said offense; or
4. Any offense which necessarily includes or is necessarily included in the first offense charged.

Note: The discharge of a defendant on a preliminary investigation is NOT an adjudication in his favor as will bar subsequent prosecution for the offense. This is because, a preliminary investigation is not a trial and does not have for its object that of determining definitely the guilt of the accused. Furthermore, the accused has not yet been arraigned.

Requisites to raise double jeopardy:

1. First jeopardy must have attached;
2. First jeopardy must have been 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 frustration thereof.

Dismissal vs. Acquittal

Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show defendant's guilt beyond reasonable doubt.

Dismissal does not decide the case on the merits or that the defendant is not guilty.

Even if the decision of acquittal was erroneous, the prosecution still cannot appeal the decision as it would put the accused in double jeopardy.

Dismissal with Express Consent

Express consent to a provisional dismissal is given either viva voce or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning. (*People v. Lacson*, G.R. No. 149453, October 7, 2003).

General Rule: A dismissal with the express consent of the accused will not bar the prosecution of the same offense because such consent is considered a valid waiver of his

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right against double jeopardy (*People vs. Salico*, G.R. No. L-1610, October 12, 1949).

Exception: When a dismissal, even with the express consent of the accused, is tantamount to acquittal such as:

1. Dismissal based on a DEMURRER TO EVIDENCE (*insufficiency of evidence given by prosecution*) filed by the accused after the prosecution has rested;
2. Dismissal due to the DENIAL OF ACCUSED'S RIGHT TO SPEEDY TRIAL and disposition of the case. (*Condrada v. People*, G.R. No. 141646, February 28, 2003; *Caes v. IAC*, G.R. No. 74989-90, November 6, 1989).

- If an act is punished by a law and an ordinance, even if they are considered as different offenses, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.
- If a single act is punished by two different provisions of law or statutes, but each provision requires proof of an additional fact which the other does not so require, neither conviction nor acquittal in one will bar a prosecution for the other (*Perez vs. Court of Appeals*, G.R. No. 80838, Nov. 29, 1988).

Tests for determining whether the two offenses are identical:

There is IDENTITY between two offenses when the second offense:

1. Is exactly the same as the first;
2. Is an attempt to or frustration of the first;
3. Is necessarily included in the first; or
4. Necessarily includes the first and is necessarily included in the offense charged in the first information.

Exceptions to the 4th rule upon conviction for the first offense charged:

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 of the offended party; **except** when the offended party failed to appear during the arraignment.

- **Second Offense necessarily includes the First Offense:** Whether the facts as alleged in the second information, if proved, would have been sufficient to sustain the former information, or from such second information, the accused may have been acquitted or convicted for the first information.
- In any of these instances, such period of the sentence as may have been served by the accused under the former conviction shall be credited against and deducted from the sentence he has to serve should he be convicted under the subsequent prosecution.

SECTION 8. PROVISIONAL DISMISSAL

General Rule: Where the case was dismissed "provisionally" with the consent of the accused, he CANNOT invoke double jeopardy in another prosecution therefor OR where the case was reinstated on a motion for reconsideration by the prosecution.

Exceptions: Where the dismissal was actually an acquittal based on:

1. Lack or insufficiency of the evidence;
2. Denial of the right to speedy trial, hence, even if the accused gave his express consent to such dismissal or moved for such dismissal, such consent would be immaterial as such dismissal is actually an acquittal.

Requisites:

1. Consent of the prosecutor;
2. Express consent of the accused;
3. Notice to the offended party.

Express Consent

It must be *positive, direct, unequivocal consent* requiring no inference or imputation to supply its meaning. The mere inaction or silence of the accused or his failure to object to a provisional dismissal of the case does not amount to express consent.

When does it become permanent?

If a case is provisionally dismissed with the consent of the prosecutor and the offended party, the failure to reinstate it within the given period will make the dismissal permanent.

Period for Reinstatement:

1. Offenses punishable by imprisonment not exceeding 6 years = **ONE YEAR** after issuance of the order
2. Offenses punishable by imprisonment of

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more than 6 years = **TWO YEARS** after issuance of the order

If no revival of the case is made within the prescribed period, the dismissal shall be removed from being provisional and becomes permanent.

Note: The State may revive a criminal case beyond the one-year or two-year periods, provided there is a justifiable necessity for the delay.

The case may be revived or refiled even beyond the prescribed periods subject to the right of the accused to oppose the same on the ground of double jeopardy or that such revival or refiled is barred by the statute of limitations (*People v. Lacson*, G.R. No. 149453, October 7, 2003).

How to Revive a Case:

1. Refiling of the information;
2. Filing a new information for the same offense or one necessarily included in the original offense charged.

SECTION 9. FAILURE TO MOVE TO QUASH OR TO ALLEGE ANY GROUND THEREFOR

All grounds for a motion to quash are **WAIVED** if **NOT** seasonably raised, **except**:

1. When the information does not charge an offense;
2. Lack of jurisdiction of the court;
3. Extinction of the offense or penalty; and
4. Double jeopardy.

RULE 118. PRE-TRIAL

SECTION 1. PRE-TRIAL; MANDATORY IN CRIMINAL CASES

Importance of Pre-Trial

1. It covers not only that period technically defined in *Rule 118* but also that period from filing of the information up to the actual conduct of trial;
2. It encompasses many legal remedies such as the filing of Motion to Quash (*Rule 117*), Motion to Suppress Evidence (*Sec. 14, Rule 126*), Motion for Determination of Probable Cause (*Rule 126*);
3. It is that period when an accused may invoke the presumption of innocence and be assured that he need not say or do anything else (Old rule on pre-trial where the same was at the option of the Accused).

Pre-Trial in Civil Cases	Pre-Trial in Criminal Cases
The presence of the defendant is required, unless he is duly represented at the pre-trial conference by his counsel with the requisite authority to enter into a compromise agreement, failing in either of which the case shall proceed as if the defendant has been declared in default.	The accused is merely required to sign the written agreement arrived at in the pre-trial conference, if he is in conformity therewith. Unless otherwise required by the court, his presence therefore is not indispensable. Note: This is aside from the consideration that the accused may waive his presence at all stages of the criminal action, except at the arraignment, promulgation of judgment or when required to appear for identification.
The presence of the plaintiff is required at the pre-trial unless excused therefrom for valid cause or if he is represented therein by a person fully authorized in writing to perform the acts specified in <i>Sec 4, Rule 18</i> . Absent such justification, the case may be dismissed with or without prejudice.	The presence of the private offended party is not required at the pre-trial. Instead, he is required to appear at the arraignment of the accused for purposes of plea bargaining, determination of civil liability, and other matters requiring his presence. Should he fail to appear therein, and the accused offers to plead guilty to a lesser offense necessarily included in the offense charged, he may be allowed to do so with the conformity of the trial prosecutor alone.
A pre-trial brief is required with the particulars and the sanctions provided by <i>Sec. 6, Rule 18</i> .	The Rules do not require the filing of a pre-trial brief in criminal cases. It only requires attendance at a pre-trial conference to consider the matters stated in <i>Sec. 2, Rule 118</i> (<i>Regalado</i> , pp. 519-520).

Mandatory Pre-Trial in Criminal Cases

In all cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan, the justice or judge

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shall, after arraignment, order a pre-trial conference to consider the following:

1. Plea bargaining
 2. Stipulation of facts
 3. Marking for identification of evidence
 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 (reverse trial)
 6. Other matters that will promote a fair and expeditious trial of the civil and criminal aspects of the case.
- The court shall, after arraignment and within 30 days from the time the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for by special laws or circular of the Supreme Court, order a pre-trial.

Plea Bargaining is the process whereby the accused, the offended party and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.

Plea bargaining is to be encouraged (*Speedy Trial Act of 1998*).

Exception: Plea bargaining is not allowed under the Dangerous Drugs Act where the imposable penalty for the offense charged is *reclusion perpetua* to death (Sec. 18, RA 7659).

SECTION 2. PRE-TRIAL AGREEMENT

Pre-Trial Agreement – All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise the same shall not be used in evidence against the accused.

Requisites before the pre-trial agreement can be used as evidence:

1. They are reduced to writing;
 2. The pre-trial agreement is signed by the accused AND his counsel.
- The agreements in relation to matters referred to in Section 2 hereof is subject to the approval of the court: Provided, that the agreement on the plea of the accused to a lesser offense may only be revised, modified, or annulled by the court when

the same is contrary to law, public morals, or public policy (Sec. 3, *Speedy Trial Act of 1998*):

Note: Provided, that the agreement on the plea of the accused should be to a lesser offense necessarily included in the offense charged (Sec. 4, *Circular 38-98*).

- The requirement in Section 2 is intended to safeguard the right of the accused against improvident or unauthorized agreements or admissions which his counsel may have entered into, or which any person may ascribe to the accused without his knowledge, as he may have waived his presence at the pre-trial conference (*People vs. Uy, 2000*).
- The omission of the signature of the accused and his counsel, as mandatorily required by the rules, renders the stipulation of facts inadmissible in evidence.
- Agreements covering the matters referred to in Section 1 of Rule 118 shall be approved by the court.

SECTION 3. NON-APPEARANCE AT PRE-TRIAL CONFERENCE

Non-appearance at Pre-Trial Conference.

Where counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his/her lack of cooperation, the pre-trial justice or judge may impose proper sanctions or penalties (Section 4, *Speedy Trial Act*).

- The sanctions or penalty may be in the form of reprimand, fine or imprisonment. Inasmuch as this is similar to indirect contempt of court, the penalty for indirect contempt may be imposed.
- The accused is not the one compelled to appear, but only the counsel for the accused, or the prosecutor. The principal reason why accused is not included in the mandatory appearance is the fear that to include him is to violate his constitutional right to remain silent.

SECTION 4. PRE-TRIAL ORDER

Pre-Trial Order – After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. (Section 5, *Speedy Trial Act*).

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Purposes:

1. Bind the parties to issues raised therein;
2. Limit the trial to matters not disposed of;
3. Control the course of the action during trial.

Note: Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial which shall commence within thirty (30) days from receipt of the pre-trial order (Sec. 6, SC Circular No. 38-98).

- After the pre-trial, the court issues an order reciting actions taken, facts stipulated and evidence marked, and thereafter the trial on the merits will proceed on matters not disposed of during the pre-trial.
- To prevent manifest injustice, however, the pre-trial order may be modified by the court, upon its own initiative or at the instance of any party.

Dealing with the plea of an accused and the burden of interposing a defense

- If the accused pleads not guilty to the crime charged, he/she shall state whether he/she interposes a negative or affirmative defense.
- A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence (Sec. 7, par.2, Speedy Trial Act).

Note: This disclosure order runs counter to the right of the accused to be presumed innocent and the burden of proof (Article 111, Sec. 14). It would also result in absurdity where the Accused pleads "not guilty" but maybe required to "prove his innocence" if he interposes "an affirmative defense".

RULE 119. TRIAL

SECTION 1. TIME TO PREPARE FOR TRIAL

Trial is examination before a competent tribunal according to the laws of the land, of the facts put in issue in a case for the purpose of determining such issue.

- After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall

commence within 30 days from receipt of the pre-trial order.

- Denial of the right to prepare is reversible error. The proper remedy from a judgment of conviction under such case is appeal and not certiorari nor habeas corpus (*Montilla vs. Arellano*, G.R. No. 123872, Jan. 30, 1998).

SECTION 2. CONTINUOUS TRIAL UNTIL TERMINATED; POSTPONEMENTS

Continuous Trial System

Trial once commenced shall continue from day to day as far as practicable until terminated; but it may be postponed for a reasonable period of time for good cause.

Limitation of the Trial Period

It shall in no case exceed 180 days from the first day of the trial, **except** as otherwise provided by the Supreme Court. But, said limitation shall not apply where special laws or circular of the Supreme Court provide for a shorter period of time. Cases below are the same with the instances when arraignment is made within a shorter period (See Sec. 1, Rule 116).

1. Rules on Summary Procedure – must be arraigned and tried immediately;
2. RA 4908 where the offended party is about to depart from the Philippines without definite date of return – arraignment without delay;
3. RA 7610 involving child abuse cases – must be tried within three (3) days from arraignment;
4. RA 9165 on Dangerous Drugs – must be tried within 60 days and decision within 15 days from submission;
5. Intellectual Property Code cases – trial within 60 days and decision within 30 days from submission of the case;
6. Heinous crime cases – trial within 60 days and decision within 30 days from submission.

Requisites before a trial can be put off on account of the absence of a witness:

1. That the witness is material and appears to the court to be so;
2. That the party who applies has been guilty of no neglect;
3. That the witnesses can be had at the time to which the trial is deferred and incidentally that no similar evidence could be obtained;
4. That an affidavit showing the existence of the above circumstances must be filed.

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Remedies of accused where a prosecuting officer without good cause secures postponements of the trial of a defendant against his protest beyond a reasonable period of time:

1. Mandamus to compel a dismissal of the information;
 2. If he is restrained of his liberty, by habeas corpus to obtain his freedom.
- The SC adopted the continuous trial system as a mode of judicial fact-finding and adjudication conducted with speed and dispatch so that trials are held on the scheduled dates without postponement, the factual issues for trial well-defined at pre-trial and the whole proceedings terminated and ready for judgment within 90 days from the date of initial hearing, unless for meritorious reasons an extension is permitted.

The System requires that the Presiding Judge:

1. Adhere faithfully to the session hours prescribed by laws;
2. Maintain full control of the proceedings; and
3. Effectively allocate and use time and court resources to avoid court delays;
4. Continuous trial on a weekly or other short-term trial calendar at earliest possible time.

The non-appearance of the prosecution at the trial, despite due notice, justified a provisional dismissal or an absolute dismissal depending upon the circumstances.

Note: The court does not lose jurisdiction after the trial period limit. The Judge, however, may be penalized with disciplinary sanctions.

SECTION 3. EXCLUSIONS

Exclusions in Computation of Time within which trial must commence

The following periods of delay shall be excluded in computing the time within which trial must commence:

1. Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:
 - a. Delay resulting from an examination of the physical and mental condition of the accused;
 - b. Delay resulting from proceedings with respect to other criminal charges

against the accused;

- c. Delay resulting from extraordinary remedies against interlocutory orders;
 - d. Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
 - e. Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
 - f. Delay resulting from a finding of the existence of a prejudicial question; and
 - g. Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.
2. Any period of delay resulting from the absence or unavailability of an essential witness;

Note: A witness shall be considered **ABSENT** when his whereabouts are unknown or cannot be determined with due diligence. He shall be considered **UNAVAILABLE** if his whereabouts are known but his presence for trial cannot be obtained with due diligence.

3. Any period of delay resulting from the 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;
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 no motion for separate trial has been granted;
6. Any period of delay resulting 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 the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial (Sec. 9, cir. 38-98).

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SECTION 4. FACTORS FOR GRANTING CONTINUANCE

Continuance: the postponement of trial. Granting of motion for continuance is a matter of discretion on the part of court and not a matter of right.

The following factors, among others, shall be considered by a court in determining whether to grant a continuance under *Section 3(f) of this Rule*:

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;
 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.
- In addition, no continuance under *Section 3(f)* of this Rule 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.

SECTION 5. TIME LIMIT FOLLOWING AN ORDER FOR NEW TRIAL

The trial shall commence within 30 days from notice of the order for a new trial becomes final.

- If the period becomes impractical due to unavailability of witnesses and other factors, the court may extend it but not to exceed 180 days from notice.

SECTION 6. EXTENDED TIME LIMIT

SECTION 7. PUBLIC ATTORNEY'S DUTIES

Where Accused is Imprisoned

Public Attorneys referred to in this section are those attorneys of the Public Attorney's Office of the Department of Justice who are assisting accused not financially capable to have a counsel of their own. These public attorneys enter their appearance in behalf of the accused upon his request or that of his relative or upon being appointed as counsel *de officio* by the court.

It shall be his duty to do the following:

1. 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 so advise the prisoner of his right to demand trial;
2. Upon receipt of that notice, the custodian 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 custodian of the prisoner receives from the public attorney a properly supported request for the availability of the prisoner for purposes of trial, the prisoner shall be made available accordingly (*Sec. 12, Circ. 38-98*).

SECTION 8. SANCTIONS

Certain sanctions under *Section 8* may be imposed by the court whenever the private counsel for the accused, the public attorney, or the prosecutor:

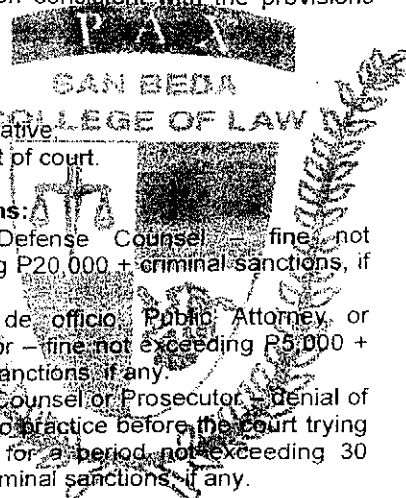
1. Knowingly allows the case to be set for trial without disclosing that a necessary witness would be unavailable for trial;
2. Files a motion solely for delay which he knows is totally frivolous and without merit;
3. Makes a statement for the purpose of obtaining continuance which he knows to be false and which is material to the granting of a continuance; or
4. Willfully fails to proceed to trial without justification consistent with the provisions hereof.

Kinds:

1. Criminal;
2. Administrative;
3. Contempt of court.

The Sanctions:

1. Private Defense Counsel – fine, not exceeding P20,000 + criminal sanctions, if any.
2. Counsel *de officio*, Public Attorney, or Prosecutor – fine, not exceeding P5,000 + criminal sanctions, if any.
3. Defense Counsel or Prosecutor – denial of the right to practice before the court trying the case for a period, not exceeding 30 days + criminal sanctions, if any.



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SECTION 16. TRIAL OF SEVERAL ACCUSED

General Rule: When two or more persons are jointly charged with an offense, they shall be tried jointly. This rule is so designed as to preclude a wasteful expenditure of judicial resources and to promote an orderly and expeditious disposition of criminal prosecutions.

Exception: The court, upon motion of the fiscal or of any of the defendants, may order a separate trial for one or more accused. The granting of a separate trial when two or more defendants are jointly charged with an offense is purely discretionary with the trial court. In the interest of justice, a separate trial may be granted even after the prosecution has finished presenting its evidence in chief (*Joseph vs. Villaluz, G.R. No. L-45911, April 11, 1979*).

- If a separate trial is granted, the testimony of one accused imputing the crime to his co-accused is not admissible against the latter. In joint trial, it would be admissible if the latter had the opportunity for cross-examination.

SECTION 17. DISCHARGE OF ACCUSED TO BE STATE WITNESS

Motion to discharge should be made by the prosecution BEFORE resting its case.

Note: The rule expressly allows the discharge of more than one defendant (*People vs. Bacsa, G.R. No. L-11485, July 11, 1958*).

Requisites for Discharge

1. Require Prosecution to present evidence and the sworn statement of the proposed witnesses at a hearing in support of the discharge;
2. Require submission of sworn statement of each proposed witness at a hearing in support of the discharge and ascertain if the conditions fixed by Sec. 17 of Rule 119 are complied with, namely:
 - a. Absolute necessity for the testimony of the accused whose discharge is requested;
 - "Absolute necessity" means that he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecutor.

- b. No other direct evidence available for the prosecution;
- c. Testimony can be substantially corroborated in its material points;
- d. Accused does not appear to be the most guilty;
- e. Accused has never been convicted of an offense involving moral turpitude.
- f. The application for discharge is filed by the prosecution before the defense has offered its evidence.

- Absence of any of the requisites for the discharge of a *particeps criminis* is a ground for objection to the motion for his discharge, BUT such objection must be raised BEFORE the discharge is ordered.

Note: There is nothing in the law that requires a prosecutor to first include the proposed state witness in the information and then later secure his discharge before he could be presented as government witness (*People vs. Castaneda, G.R. No. 45129, September 24, 1936*).

RA 6981	Sec. 17, Rule 119 Rules of Court
The offense in which the testimony is to be used is limited only to grave felony.	It has no qualifications; it applies to all felonies.
The immunity is granted by DOJ.	The immunity is granted by the court.
The witness is automatically entitled to certain rights and benefits.	The witness so discharged must still apply for the enjoyment of said rights and benefits in the DOJ.
The witness need not be charged elsewhere.	He is charged in court as one of the accused as stated in the information.
No information may thus be filed against the witness.	The charges against him shall be dropped and the same operates as an acquittal.

Any question against the order of the court to discharge an accused to be used as state witness must be raised in the trial court; it cannot be considered on appeal. Where there is, however, a showing of grave abuse of discretion the order of the trial court may be challenged in a petition for certiorari and prohibition.

Effects of Discharge

1. Evidence adduced in support of the discharge shall automatically form part of the trial;
2. If the court denies the motion to discharge

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the accused as state witness, his sworn statement shall be inadmissible in evidence;

3. Discharge of accused operates as an acquittal and bar to further prosecution for the same offense.

Discharge under this rule is only one of the modes to be a state witness. **Other modes:**

- a. The Witness Protection Program of RA 6981;
- b. The power of the ombudsman to grant immunity under Section 17 of RA 6770;
- c. Immunity under PD 749; and
- d. The grant of immunity under EO 14-A.

SECTION 18. DISCHARGE OF ACCUSED OPERATES AS ACQUITTAL.

General Rule: The discharge of the accused shall amount to an acquittal and shall be a bar to future prosecution for the same offense.

Note: Where an accused has been discharged to be utilized as state witness and he thus testified, the fact that the discharge was erroneous as the conditions for discharge were not complied with did not thereby nullify his being precluded from re-inclusion in the information or from being charged anew for the same offense or for an attempt or frustration thereof, or for crimes necessarily included in or necessarily including those offense.

Exceptions:

1. If the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis of the discharge;
2. Failure to testify refers exclusively to defendant's will or fault;
3. Where an accused who turns into a state witness on a promise of immunity but later retracts and fails to keep his part of the agreement, his confession of his participation in the commission of the crime is admissible as evidence against him. (*People vs. Beberino*, G.R. No. L-23213, October 28, 1977)

SECTION 19. WHEN MISTAKE HAS BEEN MADE IN CHARGING THE PROPER OFFENSE

- When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears

good cause to detain him.

- In such case, the court shall commit the accused to answer for the proper offense and dismiss the case upon filing of the proper information.
- This rule is predicated on the fact that an accused person has the right to be informed of the nature and cause of the accusation against him, and to convict him of an offense different from that charged in the complaint or information would be an unauthorized denial of that right.

SECTION 20. APPOINTMENT OF ACTING PROSECUTOR

Note: See Section 5, Rule 110.

SECTION 21. EXCLUSION OF THE PUBLIC

General Rule: The accused has the right to a public trial and under ordinary circumstances; the court may not close the door of the courtroom to the general public.

Exception: Where the evidence to be produced during the trial is of such character as to be offensive to decency or public morals, the court may *motu proprio* exclude the public from the courtroom.

The court may also, on motion of the accused, exclude the public from the trial EXCEPT court personnel and the counsel of the parties.

SECTION 22. CONSOLIDATION OF TRIALS OF RELATED OFFENSES

This contemplates a situation where separate information are filed:

1. For offenses founded on the same facts;
2. For offenses which form part of a series of offenses of similar character.

- In these cases, the charges may be tried jointly at the court's discretion. The object of consolidation of trials of related offenses is to avoid multiplicity of suits, guard against oppression or abuse, prevent delay, clear congested dockets, simplify the work of the trial court, and save unnecessary cost and expenses (*Ralanca vs. Querubin*, G.R. No. L-29543, November 29, 1969)

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SECTION 23. DEMURRER TO EVIDENCE

After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence:

1. On its own initiative after giving the prosecution the opportunity to be heard; or
2. Upon demurrer to evidence filed by the accused with or without leave of court.

With or Without Leave of Court

1. With Leave

- If the motion is denied, he can still present evidence.
- The motion must be filed within a non-extendible period of **five (5) days** after the prosecution rests its case.
- If leave is granted, the accused shall file the demurrer to evidence within a non-extendible period of 10 days from notice of the grant of leave of court.
- The prosecution may oppose the demurrer to evidence within a non-extendible period of 10 days from receipt of the demurrer.

2. Without leave

- If the motion is denied, he loses the right to present evidence and the case will be deemed submitted for decision.

Purpose for requirement to obtain leave of court: To determine whether or not the defendant in a criminal case has filed the demurrer merely to stall the proceedings (*People vs. Mahinay, G.R. No. 109613, July 17, 1995*).

- If the demurrer is sustained by the court, the order of dismissal is tantamount to an acquittal. Hence, it is not appealable.
- If demurrer is granted and the accused is acquitted by the court, the accused has the right to adduce evidence on the civil aspect of the case unless the court also declares that the act or omission from which the civil liability may arise did not exist.
- If the trial court issues an order or renders judgment not only granting the demurrer to evidence of the accused and acquitting him but also on the civil liability of the accused to the private offended party, said judgment on the civil aspect of the case would be a nullity for the reason that the constitutional right of the accused to due process is thereby violated (*Salazar v. People G.R. No. 151931, September 23, 2003*).
- The order denying the motion for leave of

court to file demurrer to evidence or the demurrer itself shall NOT be reviewable by appeal or by certiorari before judgment since it is considered an interlocutory order.

SECTION 24. REOPENING

- At any time BEFORE FINALITY of the JUDGMENT OF CONVICTION, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid miscarriage of justice.
- The proceedings shall be terminated within 30 days from the order granting it.

RULE 120: JUDGMENT

SECTION 1. JUDGMENT; DEFINITION AND FORM

Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition of the proper penalty and civil liability provided for by the law.

Judgment must be:

1. In writing;
2. In the official language;
3. Personally and directly prepared and signed by the judge;
4. With a concise statement of the fact and the law on which it is based.

Note: This requirement is mandatory. A verbal judgment is incomplete and invalid as it does not contain findings of fact and is not signed by the judge. The infirmity, however, may be corrected by a subsequent full blown judgment (*People vs. Lascuna, G.R. No. 90626, Aug. 18, 1993*).

Remedy if Judgment is not put in writing

To file a petition for mandamus to compel the judge to put in writing the decision of the court.

JUDGMENT pronounces the disposition of the case; **RATIO DECIDENDI** provides the basic reason for such determination (*Republic vs. Cuevas [CA], 03845-R, November 11, 1975*).

- It is not necessary that the judge who tried the case be the same judicial officer to decide it. It is sufficient if he be apprised of the evidence already presented by a reading of the transcript of the testimonies already introduced, in the same manner as

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appellate courts review evidence on appeal (*People vs. Peralta*, G.R. No. 94570, September 28, 1994).

(*Padilla vs. CA*, G.R. No. L-63451, May 31, 1984).

Note: Through *Adm. Circular No. 12-2000* (dated Nov. 21, 2000) and *Adm. Circular No. 08-2008* (dated Jan. 25, 2008) the Rule of Preference is the imposition of fine instead of imprisonment in BP 22 and LIBEL cases, respectively, subject to the sound discretion of the Presiding Judge. However, this is with subsidiary imprisonment in case of non-payment of the fine imposed as a penalty.

SECTION 2. CONTENTS OF THE JUDGMENT

If the judgment is one of CONVICTION, judgment must state:

1. Legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending its commission;
2. Participation of the accused, whether as principal, accomplice or accessory;
3. Penalty imposed upon the accused;
4. Civil liability or damages caused by the wrongful act or omission, unless a separate civil action has been reserved or waived.

If the judgment is one of ACQUITTAL, it must state:

1. Whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt;
2. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

Civil Liability in Case of Acquittal:

1. If the acquittal is based on reasonable doubt;
 2. The decision contains a declaration that the liability of the accused is not criminal but only civil;
 3. The civil liability is not derived from or based on the criminal act of which the accused is acquitted. (*Sadio vs. Hon. RTC of Antique*, G.R. No. 91143, Sept. 24, 1991)
- There appears to be no sound reason to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. Due process has been accorded the accused

Civil liability arising from crimes:

1. Actual Damages – It must include life expectancy and loss of earning capacity (*People vs. Marollano*, G.R. No. 105004, July 24, 1997);
2. Moral Damages – It must be separate from actual damages and should not be lumped into the whole amount (*People vs. Castillo*, G.R. No. 116122, Sept. 06, 1996);
3. Exemplary Damages – Where there are no aggravating circumstances, no award of exemplary damages (*People vs. Manggasin*, G.R. No. 130599-600, April 24, 1999); It is awarded when the crime was committed with one or more aggravating circumstances.

Note: In *People vs. Combate* (G.R. No. 189301, December 15, 2001), the Court held that exemplary damages while generally awarded where the presence of an aggravating circumstance is alleged and proved, such damages may be exceptionally allowed even in the absence of such circumstances when the court finds that the facts of the case share the highly reprehensible or outrageous conduct of the offender.

4. Attorney's fees – Only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded (*People vs. Teehankee Jr.*, G.R. Nos. 112206-08, Oct. 06, 1995).

Reasonable Doubt

The state of the case which, after full consideration of all evidence, leaves the mind of the judge in such a condition that he cannot say that he feels an abiding conviction, to a moral certainty, of the truth of the charge.

Acquittal

A finding of not guilty based on the merits, that is, the accused is acquitted because the evidence does not show that his guilt is beyond reasonable doubt, or a dismissal of the case after the prosecution has rested its case upon motion of the accused on the ground that the evidence fails to show beyond reasonable doubt that the accused is guilty.

Note: It is well-settled that acquittal, in a criminal case, is immediately final and executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy.

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(*Barbers vs. Laguio, Jr., A.M. No. RTJ-00-1568, February 15, 2001*).

- An acquittal of an accused based on reasonable doubt DOES NOT bar the offended party from filing a separate civil action based on other sources of obligation.

SECTION 3. JUDGMENT FOR TWO OR MORE OFFENSES

When two or more offenses are charged in the complaint or information, and the accused fails to object to it before trial, the court may convict the accused of as many offenses as charged and proved.

A complaint or information must charge but one offense, **except** only in those cases in which existing laws prescribe a single punishment for various offenses (*Section 13, Rule 110*).

- However, in the service of sentence, the maximum duration of the court's sentence shall not be more than *three-fold the length of time corresponding to the most severe of the penalties imposed upon the accused, and such maximum shall in no case exceed forty years.*

SECTION 4. JUDGMENT IN CASE OF VARIANCE BETWEEN ALLEGATION AND PROOF

General Rule: An accused can be convicted of an offense only when it is both charged and proved. If it is not charged although proved, OR if it is not proved although charged, the accused CANNOT be convicted thereof.

Exception: Where there is a variance between the offense charged in the complaint or information and that proved, AND the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Note: Keep in mind that the accused can only be convicted of the lesser offense, i.e., the offense which provides for the least penalty.

SECTION 5. WHEN AN OFFENSE INCLUDES OR IS INCLUDED IN ANOTHER

General Rule: If what is proved by the prosecution evidence is an offense which is included in the offense charged in the information, the accused may validly be convicted of the offense proved.

Exception: Where facts supervened after the filing of information which change the nature of the offense.

- An offense charged NECESSARILY INCLUDES the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter.
- An offense charged is NECESSARILY INCLUDED in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

Note: An accused cannot be convicted for the lesser offense necessarily included in the crime charged if at the time of the filing of the information, the lesser offense has already prescribed (*Francisco vs. Court of Appeals, G.R. No. L-45674 May 30, 1983*).

A conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense (*Samson vs. CA, G.R. No. L-11324, March 29, 1958*).

SECTION 6. PROMULGATION OF JUDGMENT.

Promulgation of Judgment is the official proclamation or announcement of judgment. It consists of reading the judgment or sentence in the presence of the accused and any judge of the court rendering the judgment.

Rules on the validity of promulgation of judgment:

1. The judgment must have been rendered and promulgated during the incumbency of the judge who signed it.
2. The presence of counsel during the promulgation of judgment is not necessary.
3. The judgment must be read in its entirety for double jeopardy to attach.

Who may promulgate the judgment

1. Judge of the court in which it was rendered

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2. *Clerk* of the said court in the absence of the judge who rendered judgment.
3. *Executive Judge* of the RTC having jurisdiction over the place of confinement or detention, when accused is confined or detained and upon the request of the judge who rendered judgment.

Promulgation in Absentia

There are TWO (2) instances when a judgment may be promulgated even without the personal presence of the accused, to wit:

1. When the judgment is for a light offense, in which case, the accused's counsel or representative may stand in for him; and
2. In cases where despite due notice to the accused or his bondsman or warden and counsel, the accused failed to appear at the promulgation of the decision.

The only essential elements for its validity are:

1. The judgment is recorded in the criminal docket; and
2. A copy thereof is served upon the accused in his last known address or to his counsel.

Authority of the Judge promulgating the judgment

1. Accept the notice of appeal
2. Approve the bail bond pending appeal
 - However, when the decision of the trial judge changed the nature of the offense from non-bailable to bailable, the appellate court has jurisdiction.

Note: If the judgment is for conviction and the accused's failure to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.

- Within 15 days from the promulgation of judgment, however, the accused may surrender AND file a motion for leave of court to avail of these remedies. If his motion is granted, he may avail of the remedies within 15 days from notice.
- Judges are directed to take down notes of salient portions of the hearing and to proceed in the preparation of decisions without waiting for the TSNs; with or without TSNs, the 90 day period for deciding cases should be adhered to (*Lawan vs. Molata, A.M. No. L-1696-MJ, June 19, 1979*).

SECTION 7. MODIFICATION OF JUDGMENT

Upon motion of the accused, a judgment of conviction may be modified or set aside by the court **BEFORE** it has become final or **BEFORE** an appeal has been perfected.

Modification of Judgment	New Trial
No new hearings or proceedings of any kind or change in the record or evidence. A simple modification is made on the basis of what is on record.	Irregularities are expunged from the record and/or new evidence is introduced.

A JUDGMENT BECOMES FINAL:

1. When the period for perfecting an appeal has lapsed;
 2. When the sentence is partially or totally satisfied or served;
 3. When the accused expressly waives in writing his right to appeal; and
 4. When the accused applies for probation.
- A judgment of acquittal becomes final immediately after promulgation and cannot be recalled for correction or amendment. Any *modification thereof will result in double jeopardy*.
 - The prosecutor cannot ask for the modification or setting aside of a judgment of conviction because the rules clearly provide that a judgment of conviction may be modified or set aside by the court rendering upon motion of the accused.
 - The trial court can validly amend the civil portion of its decision within 15 days from promulgation thereof even though the appeal had in the meantime already been perfected by the accused from judgment of conviction.

The trial court may lose jurisdiction over the judgment even BEFORE the lapse of 15 days:

1. When the defendant voluntarily submits to the execution of the judgment.
2. When the defendant perfects his appeal.
3. When the accused withdraws his appeal.
4. When the accused expressly waives in writing his right to appeal.
5. When the accused files a petition for probation.

SECTION 8. ENTRY OF JUDGMENT

Entry of Judgment: How Made

The recording of the judgment or order in the book of entries of judgments shall constitute its

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entry. The record shall contain the dispositive part of the judgment order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory (Rule 36).

The final judgment of the court is carried into effect by a process called "MITTIMUS".

Mittimus is a process issued by the court after conviction to carry out the final judgment, such as commanding a prison warden to hold the accused in accordance with the terms of the judgment. It shall be stayed during the pendency of the motion for rehearing or reconsideration.

SECTION 9. EXISTING PROVISIONS GOVERNING SUSPENSION OF SENTENCE, PROBATION AND PAROLE NOT AFFECTED BY THIS RULE

Exceptions for suspension of sentence of youthful offenders:

1. Offender has enjoyed previous suspension of sentence.
2. Offender is convicted of crime punishable by death or life imprisonment.
3. Offender is convicted by military tribunal.
4. Offender is already of age at the time of sentencing even if he was a minor at the time of the commission of the crime.

Probation

- The period to file an application for probation is after the accused shall have been convicted by the trial court and within the period for perfecting an appeal.
- Probation is a mere privilege and is revocable before final discharge of the probationer by the court.
- The basis of the coverage of the Probation Law is gravity of the offense. Fixing the cut-off at a maximum term of 6 years imprisonment is based on the assumption that those sentenced to higher penalties pose too great a risk to society, not just because of their demonstrated capability for serious wrongdoing but because of the gravity of serious consequences of the offense they might further commit.

Offenders disqualified from probation:

1. Those sentenced to serve a maximum term of imprisonment of more than 6 years.
2. Those charged with subversion or any crime against national security or public order.

3. Those previously convicted by final judgment of an offense punished by imprisonment not less than 1 month and 1 day and/or a fine not less than P200.
4. Those who have been once on probation.
5. Those who are already serving sentence at the time the Probation Law of 1976 became applicable.

When the Court should deny Probation

1. Offender is in need of treatment that can be provided most effectively by his commitment to an institution.
2. There is an undue risk that offender will commit another crime during the period of probation.
3. When probation will depreciate the seriousness of the crime.

Sentence Imposed	Period of Probation
Not more than one (1) year	Not more than two (2) years
More than one (1) year	Not more than six (6) years
Fine only, but offender serves subsidiary imprisonment	At least equal to the number of days of subsidiary imprisonment but not more than twice such period

Parole is the conditional release of an offender from a penal or correctional institution after he has served the minimum period of his prison sentence under the continued custody of the state and under conditions that permit his reincarceration if he violates the conditions of his release.

RULE 121: NEW TRIAL OR RECONSIDERATION

SECTION 1. NEW TRIAL OR RECONSIDERATION

New Trial is the rehearing of a case already decided but before the judgment of conviction therein rendered has become final, whereby errors of law or irregularities are expunged from the record or new evidence is introduced, or both steps are taken.

Requisites to File a Motion for Reconsideration

1. Existence of judgment of conviction
2. The said judgment is not yet final.
3. Motion must be filed at the instance of the accused or by the court *motu proprio*, with the consent of the accused.

- A motion for new trial or reconsideration

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should be filed with the trial court within 15 days from the promulgation of the judgment and interrupts the period for perfecting an appeal from the time of its filing until notice of the order overruling the motion shall have been served upon the accused or his counsel.

- A motion for the reconsideration of the judgment may be filed in order to correct errors of law or fact in the judgment. It does not require any further proceeding.

Note: A new trial may be granted at any time before the judgment of conviction becomes final:

1. On motion of the accused;
2. On motion of the court but with the consent of the accused.

- The award of new trial or taking of additional evidence rests upon the sound discretion of the court.

- Once the appeal is perfected, the trial court steps out of the case and the appellate court steps in. Should it come to pass then that during the pendency of the appeal, new and material evidence, for example, have been discovered, the accused may file a motion for new trial with the appellate court.

Cases when the trial court lose jurisdiction over its sentence even before the lapse of 15 days:

1. When the defendant voluntarily submits to the execution of the sentence;
2. When the defendant perfects his appeal. The moment the appeal is perfected the court *a quo* loses jurisdiction over it, **except** for the purpose of correcting clerical errors.

Motion for Reconsideration	New Trial	Reopening Of the Case
		present additional evidence. May also be done by the court <i>motu proprio</i>
Purpose: To ask the court to reconsider its findings of law so as to conform to the law applicable in the case.	Purpose: To permit the reception of new evidence and extend the proceedings.	Purpose: To permit the reception of new evidence and extend the proceedings.

SECTION 2. GROUNDS FOR NEW TRIAL

Grounds for a New Trial in Criminal Cases:

1. Errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;
2. New and material evidence is discovered;
3. Other grounds which the court may determine in the exercise of its discretion:
 - a. Negligence or incompetency of counsel or mistake which is so gross amounting to deprivation of the substantial rights of the accused and due process (*Aguilar vs. CA, G.R. No. 114282, November 28, 1995*).
 - b. Recantation of a witness where there is no evidence sustaining the judgment of conviction other than the testimony of the witness (*Tan Ang Bun vs. CA, G.R. NO. L-47747, FEB. 15, 1990*);
 - c. Improvident plea of guilty which may be withdrawn;
 - d. Disqualification of attorney *de officio* to represent accused in trial;
 - e. Interest of justice (*Sec. 6, Rule 121*)

Requisites before a New Trial may be granted on the ground of Newly Discovered Evidence:

1. That the evidence was discovered after trial;
2. That such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence;
3. That it is material, not merely cumulative, corroborative or impeaching; and
4. The evidence is of such a weight that it would probably change the judgment if admitted.

General Rule: Mistakes or errors of counsel in the conduct of his case are not grounds for

Motion for Reconsideration	New Trial	Reopening Of the Case
Filed after judgment is rendered but before the finality thereof	Filed after judgment is rendered but before the finality thereof.	Made by the court before the judgment is rendered in the exercise of sound discretion.
Made by the court on motion of the accused or at its own instance but with the consent of the accused.	Made by the court on motion of the accused or at its own instance but with the consent of the accused.	Does not require the consent of the accused; may be at the instance of either party who can thereafter

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new trial. This rule is the same whether the mistakes are the result of ignorance, inexperience, or incompetence.

Exception: If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case.

Recantation is the public and formal withdrawal of a witness of his prior statement. It is not a ground for new trial because it makes a mockery of the court and would place the investigation of truth at the mercy of the unscrupulous witness. Moreover, retractions are easy to extort out of witness. In contrast, their statements are made under oath, in the presence of judge, and with the opportunity to cross examine.

Except: When aside from the testimony of the retracting witness, there is no 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.

Recantation	Affidavit of Desistance
A witness who previously gave a testimony subsequently declares that his statements were not true.	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.

SECTION 3. GROUNDS FOR RECONSIDERATION

Grounds for Reconsideration:

- Errors of law;
 - Errors of fact in the judgment.
- The principle underlying this rule is to afford the trial court the opportunity to correct its own mistakes and to avoid unnecessary appeals from being taken. The grant by the court of reconsideration

should require *no further proceedings*, such as the taking of additional proof.

SECTION 4. FORM OF MOTION AND NOTICE TO THE PROSECUTOR

Requisites for a motion for new trial or reconsideration:

The motion for a new trial or reconsideration shall be:

- In writing;
- Filed with the court;
- State grounds on which it is based;
- Notice of the motion for new trial or reconsideration shall be given to the fiscal.
- With respect to a Motion for New Trial.* When it is based on newly discovered evidence, it must be supported by the affidavits of the witness by whom such evidence is expected to be given, or duly authenticated copies of documents which it is proposed to introduce in evidence;

- While the rule requires that an affidavit of merits be attached to support a motion for new trial based on newly discovered evidence, yet the defect of lack of it may be cured by testimony under oath of the defendant at the hearing of the motion (*Paredes vs. Borja, G.R. No. L-15559, November 29, 1961*).

SECTION 5. HEARING ON MOTION

Where a motion for new trial calls for resolution of any question of fact, the court may hear evidence thereon by affidavits or otherwise.

Purpose of Hearing

To determine whether the new trial requested should be granted or not. It is not the new trial proper wherein the newly discovered evidence, for example, was received by the court (*Pamalan, p. 608*).

SECTION 6. EFFECTS OF GRANTING A NEW TRIAL OR RECONSIDERATION

Effects of Granting a New Trial or Reconsideration:

- When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all proceedings and evidence not affected by the commission of such errors and irregularities shall stand. **BUT** those affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the introduction of additional evidence;

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2. When a new trial is granted on the ground of *newly discovered evidence*, the evidence already taken shall stand, and the newly discovered and such other evidence as the court may, in the interest of justice, allow to be introduced, shall be taken and considered together with the evidence already in the record;
3. In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside and a new judgment rendered accordingly.

The effect of the granting of a new trial is not to acquit the accused of the crime of which the judgment finds him guilty, but precisely to set aside said judgment so that the case may be tried *de novo* as if no trial had been before.

Note: An order granting or denying new trial is appealable because in deciding the case anew, the trial court may acquit the defendant and thereafter, the prosecution would have no more opportunity of bringing before the Appellate Court the question of legality or illegality of the order granting a new trial because the defendant acquitted may plead double jeopardy (*People vs. Bocar, G.R. No. L-9050, July 30, 1955*).

RULE 122: APPEAL

SECTION 1. WHO MAY APPEAL

Any party may appeal from a judgment or final order, **UNLESS** the accused will be placed in double jeopardy.

Appeal is a proceeding for review by which the whole case is transferred to the higher court for a final determination.

- An appeal is not an inherent right of a convicted person. The right of appeal is and always has been statutory.

Note: Only final judgments and orders are appealable.

Effect of an Appeal

An appeal in a criminal case opens the whole case for review and this includes the review of the penalty, indemnity, and the damages involved. Consequently, on appeal, the appellate court may increase the penalty, indemnity, or the damages awarded by the trial court, although the offended party had not appealed from said award, and the party who sought a review of the decision was the accused.

Final Judgment	Final Order
A judgment which would become final if no appeal is taken.	Disposes of the whole subject matter or terminates a particular issue leaving nothing to be done but to enforce by execution what has been determined.

From a judgment convicting the accused, *two appeals may accordingly be taken:*

1. The accused may seek a review of said judgment, as regards both actions; or
2. The complainant may appeal with respect only to the civil action, either because the lower court has refused or failed to award damages, or because the award made is unsatisfactory to him.

Appeal of A Judgment	Appeal of An Order
Must be perfected within 15 days from promulgation	Must be perfected within 15 days from notice of the final order

General Rule: A private prosecutor in a criminal case has **NO** authority to act for the People of the Philippines before a court on appeal. It is the government's counsel, the Solicitor General, who appears in criminal cases or their incidents before the Supreme Court. At the very least, the Provincial Fiscal himself, with the conformity of the Solicitor General, shall act for the People of the Philippines (*People vs. Dacudao, G.R. No. 81389, Feb. 21, 1989*).

Exception: The civil award in a criminal case may be appealed by the private prosecutor on behalf of the offended party or his successors (*People vs. Hon. Santiago, G.R. No. 80778, June 20, 1989*).

Wherein the accused was tried *in absentia* and the decision was also promulgated in his absence, the accused should not be afforded the right to appeal therefrom unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested within fifteen (15) days from the notice of the judgment against him. While at large, he is considered to have waived such right and he has no standing in court.

SECTION 2. WHERE TO APPEAL

The appeal may be taken as follows:

1. To the Regional Trial Court, in cases decided by the Metropolitan Trial Court, Municipal Trial Court, in Cities,

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Municipal Trial Court, or Municipal Circuit Trial Court;

2. To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and
3. To the Supreme Court, in cases decided by the Court of Appeals.

No Appeal in Judgment of Acquittal

A judgment of acquittal becomes final immediately after promulgation and cannot be recalled for correction or amendment, because of the doctrine that nobody may be put twice in jeopardy for the same offense (*Kepner vs. United States*, 195 U.S. 100).

The rule prohibiting appeal should not be avoided in the guise of certiorari (*Central Bank vs. CA*, G.R. No. L-41859, Mar. 08, 1989).

Exceptions: However, an appeal from the order of dismissal shall not constitute double jeopardy if:

1. Dismissal is made upon motion, or with the express consent of the defendant;
2. Dismissal is not acquittal or based upon consideration of the evidence or on the merits of the case;
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 defendant. (*People vs. City of Manila*, G.R. No. L-36528, Sept. 24, 1987)

SECTION 3. HOW APPEAL TAKEN

(Amended by AM 00-5-03-SC, October 3, 2002)

How Appeal is taken:

1. Appeal to the Regional Trial Court: by filing a notice of appeal with the court that rendered the judgment or order appealed from and serving a copy to the adverse party;
2. Appeal to the Court of Appeals from decision of the Regional Trial Court in the exercise of its original jurisdiction: by filing a notice of appeal with the court which rendered the judgment or order appealed from and serving a copy to the adverse party;
3. Appeal to the Court of Appeals in cases decided by Regional Trial Court in the exercise of its appellate jurisdiction: by petition for review under rule 42;
4. Appeal to the Court of Appeals in cases where the penalty imposed is *reclusion*

perpetua, life imprisonment or where a lesser penalty is imposed but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death or life imprisonment is imposed: by filing a notice of appeal with the Court of Appeals;

5. Death penalty: automatic review by the Court of Appeals (A.M. No. 00-5-03-SC, October 15, 2004).
6. Except as provided in the last paragraph of Sec. 13, Rule 124, other appeals to the Supreme Court: by petition for review on certiorari.

Note: In *People v Mateo*, the Supreme Court held that while the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition (G.R. Nos. 147678-87, July 7, 2004).

From Decision of	Appeal to	How
In cases decided by the MTC, MetroTC, MeTC	RTC	Ordinary Appeal: By notice of appeal filed with the court that rendered the decision and by service of copy to adverse party.
RTC, when there are questions of both fact and law	CA	Petition for Review (Rule 42): In cases decided by the RTC in its appellate jurisdiction. Ordinary Appeal: By notice of appeal filed with the

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From Decision of	Appeal to	How
		court that rendered the decision and by service of copy to adverse party.
RTC, when the death penalty is imposed	CA	Automatic Review: No notice required
RTC, in criminal cases involving offenses for which the penalty imposed is <i>reclusion perpetua</i> or life imprisonment and those other offense, which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense.	CA	Ordinary Appeal: By notice of appeal filed with the court that rendered the decision and by service of copy to adverse party.
RTC, when only questions of law are involved	SC	Petition for Review on Certiorari
In cases decided by CA	SC	Petition for Review on Certiorari
When the death penalty is imposed in a lower court and the CA affirmed	SC	Automatic Review: No notice required

Modes of Review

The Rules of Court recognize four (4) modes by which the decision or final order of the court may be reviewed by a higher tribunal, viz.:

1. Ordinary appeal;
2. Petition for review;
3. Petition for review on certiorari;
4. Automatic appeal.

SECTION 4. SERVICE OF NOTICE OF APPEAL

If personal service of the copy of the notice of appeal cannot be made upon the adverse party or his counsel, service may be done by registered mail or by substituted service pursuant to *Sections 7 and 8 of Rule 13*.

Service by Registered Mail

Service by registered mail shall be made by depositing the copy in the post office, in a

sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the post master to return the mail to the sender after 10 days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail (*Sec. 7, Rule 13*).

Substituted Service

If service cannot be made through personal service or service by registered mail, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery (*Section 8, Rule 13*).

Publication of Notice of Appeal

If copy of the notice of appeal cannot be served on the adverse party or his counsel, it may be done by publication.

Service by publication is made in a newspaper of general circulation in the vicinity once a week for a period not exceeding 30 days (*Pamaron, p. 636*).

Effect of Perfection of Appeal

Settled is the rule, that once an appeal in a case, "whether civil or criminal, has been perfected, the court a quo loses jurisdiction over the case both over the record and over the subject of the case (*Director of Prisons vs. Teodoro, G.R. No. L-9043, July 30, 1955*).

Failure to Serve Copy to Fiscal: It is not a defect which can either nullify the appeal or prejudice the unquestionable rights of the accused.

SECTION 5. WAIVER OF NOTICE

The appellee may waive his right to a notice that an appeal has been taken. HOWEVER, the appellate court may, in its discretion, entertain an appeal notwithstanding failure to give such notice if the interests of justice so require.

SECTION 6. WHEN APPEAL TO BE TAKEN

An appeal must be filed within fifteen (15) days counted from the promulgation or notice of the judgment or order appealed from.

The period for appeal is interrupted from the time a motion for new trial or reconsideration is

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filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

Computation of the Period to Appeal

In computing the period to appeal, the first day is excluded and the last day is included. Should the last day fall on a Sunday or a holiday, the period continues to run until the next day which is neither a Sunday nor holiday (*Section 13, Revised Administrative Code*).

Take Note:

The appellant has a "fresh period" of 15 days, from the receipt of the notice or order denying his motion for reconsideration or for new trial, within which to appeal the court's decision.

The Court in *Judith Yu v. Judge Samson-Tatad*, (GR No. 170979, February 9, 2011) held that the "fresh period" rule previously laid down in *Neypes v. CA*, shall likewise be **applicable to criminal cases** for the following reasons:

1. *Section 39 of BP 129* does not distinguish between a civil and criminal case in setting the period to appeal at 15 days from the notice of the final order appealed from. Note that the court in *Neypes* had held that the denial of the Motion for Reconsideration or for New Trial is the "final order" referred to in *BP 129*.
2. The provisions of *Section 3 of Rule 41* and *Section 6 of Rule 122*, though differently worded mean exactly the same. That the appeal period stops running from the time a motion for new trial or reconsideration is filed, and begins to run again upon receipt of the order denying such motions. There is then no reason why the period of appealed which is stayed in civil cases should likewise not be stayed in a criminal case when a motion for new trial or reconsideration is filed.
3. The Court had included in the coverage of *Neypes Rule 42* on petitions for review from the RTC to the CA and *Rule 45* on appeals by certiorari to the Supreme Court. Both these rules apply to an appeal in a criminal case pursuant to *Sec. 3 of Rule 122*.

SECTION 7. TRANSCRIBING AND FILING NOTES OF STENOGRAPHIC REPORTER UPON APPEAL

SECTION 8. TRANSMISSION OF PAPERS TO APPELLATE COURT UPON APPEAL

Within five (5) days from the filing of the notice of appeal, the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case, together with said notice.

SECTION 9. APPEAL TO THE REGIONAL TRIAL COURTS

SECTION 10. TRANSMISSION OF RECORDS IN CASE OF DEATH PENALTY

SECTION 11. EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED

These are the effect of appeal by any of several accused:

1. An appeal taken by one or more of several accused shall not affect those who did not appeal, **except** insofar as the judgment of the appellate court is favorable and applicable to the latter;
2. The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from;
3. Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party.

Note: The Supreme Court has relaxed the application of this provision in certain cases:

- a. In *People vs. Fernandez* (G.R. No. 80481, June 27, 1990), the Supreme Court applied the benefit of an acquittal handed down in an appeal, to an accused who jumped bail or escaped.
- b. In *People v. Olivo* (G.R. No. 177768, July 27, 2009) an accused was granted from the acquittal of his co-accused despite the former's failure to appeal from the judgment.

SECTION 12. WITHDRAWAL OF APPEAL

An appellant may withdraw his appeal BEFORE the record has been forwarded by the clerk of court to the proper appellate court as provided by *Section 8* in which case the judgment shall become final.

- a. The court may also, in its discretion, allow the appellant to withdraw his appeal, PROVIDED a motion to that effect is filed BEFORE the rendition of the judgment in the case on appeal (*People vs. Madrigal*).

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Gonzales, G.R. Nos. L-16688-90, April 30, 1963).

- Once appeal is withdrawn, the decision or judgment appealed from becomes at once final and executory (*People vs. Dueño, G.R. No. L-31102, May 5, 1979*).

SECTION 13. APPOINTMENT OF COUNSEL DE OFFICIO FOR ACCUSED ON APPEAL

The right to counsel *de officio* does not cease upon the conviction of an accused by a trial court but continues even during appeal.

Duties of the clerk of the trial court to the appellant who is confined in prison upon the presentation of notice of appeal:

1. He shall ascertain from the appellant, whether he desires the Regional Trial Court, Court of Appeals or the Supreme Court to appoint an attorney *de officio* to defend him;
2. He shall transmit with the record, upon a form to be prepared by the clerk of the appellate court, a certificate of compliance with this duty and of the response of the appellant to his inquiry.

RULE 123: PROCEDURE IN MUNICIPAL TRIAL COURTS

SECTION 1. UNIFORM PROCEDURE

Procedure to be observed in Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts: They shall observe the same procedure as in the Regional Trial Courts.

Except:

1. Where a particular provision expressly or impliedly applies only to the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts or Regional Trial Courts;
2. In criminal cases governed by the Rules on Summary Procedure in Special Cases.

RULE 124: PROCEDURE IN THE COURT OF APPEALS

SECTION 1. TITLE OF THE CASE

SECTION 2. APPOINTMENT OF COUNSEL DE OFFICIO FOR THE ACCUSED

Instances when an Accused can be given a Counsel *de Officio* on Appeal:

1. Accused is confined in prison;
2. He is without counsel *de parte* on appeal;

or

3. He signed the notice of appeal himself.

Exception: An accused-appellant not confined to prison can have a counsel *de officio* if requested by him in the appellate court within 10 days from receipt of the notice to file brief and the right thereto is established by affidavit.

SECTION 3. WHEN BRIEF FOR THE APPELLANT TO BE FILED

Seven (7) copies of the brief shall be filed within 30 days from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record.

Brief literally means a short or condensed statement.

SECTION 4. WHEN BRIEF FOR APPELLEE TO BE FILED; REPLY BRIEF OF THE APPELLANT

The appellee shall file 7 copies of the brief with the clerk of court within 30 days from receipt of the brief of the appellant accompanied by proof of service of 2 copies thereof upon the appellant.

A reply brief, on the other hand, may be filed by the appellant within 20 days from receipt of the brief of the appellee. The reply brief shall traverse matters raised in the appellee's brief but not covered in the brief of the appellant.

SECTION 5. EXTENSION OF TIME FOR FILING BRIEFS

Not allowed **except** for good and sufficient cause and only if the motion for extension is filed before the expiration of the time sought to be extended.

SECTION 6. FORM OF BRIEFS

SECTION 7. CONTENTS OF BRIEFS

The briefs in criminal cases shall have the same contents as provided in Sections 13 and 14 of Rule 144. A certified true copy of the decision or final order appealed from shall be appended to the brief of the appellant.

- Unlike the procedure in civil cases, it has been held that it is not essential for the accused to make assignment of errors in his brief, as on appeal, the whole record of the case is submitted to and reviewable by

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the appellate court.

- Issues that were never raised in the proceedings before the trial court cannot be considered and passed upon on appeal.

SECTION 8. DISMISSAL OF APPEAL FOR ABANDONMENT OR FAILURE TO PROSECUTE

Grounds for Dismissal of Appeals

1. Failure on the part of the appellant to file brief within the reglementary period, **except** when he is represented by a counsel *de officio*;
2. Escape of the appellant from prison or confinement;
3. When the appellant jumps bail; and
4. Flight of the appellant to a foreign country during the pendency of the appeal.

Dismissal of Appeal; Need of Notice to Appellant

The Court of Appeals may dismiss *motu proprio* or on motion by appellee an appeal for failure on the part of the appellant, **except** when represented by a counsel *de officio*, to file his brief on time, BUT it must have a notice served upon the appellant of the action to be taken by said court before dismissing *motu proprio* the appeal.

Effect of Escape of Accused;

Abandonment of Appeals

1. If the convict escapes from prison or confinement or refuses to surrender to the proper authorities, jumps bail or flees to a foreign country, he is deemed to have abandoned his appeal AND the judgment of the court below becomes final;
2. In that case, the accused cannot be afforded the right to appeal UNLESS (a) He voluntarily submits to the jurisdiction of the court or (b) Is otherwise arrested within 15 days from notice of the judgment against him.

SECTION 9. PROMPT DISPOSITION OF CASES

- It is discretionary for the appellate court whether to order a hearing of the case before it or decide the appeal solely on the evidence submitted to the trial court.
- If the Court of Appeals chooses not to hear the case, the Justices composing the division may just deliberate on the case, evaluate the recorded evidence on hand and then decide it.

SECTION 10. JUDGMENT NOT TO BE REVERSED OR MODIFIED EXCEPT FOR SUBSTANTIAL ERROR

General rule: The findings of the judge who tried the case and heard the witnesses are not disturbed on appeal.

Exception: When it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (*People vs. Cabiling*, G.R. NO. L-38091, Dec. 17, 1976).

- The reversal of judgments entered in the court below is prohibited, **except** for prejudicial error or that which tends to prejudice a substantial right of a party to the proceedings.

SECTION 11. SCOPE OF JUDGMENT

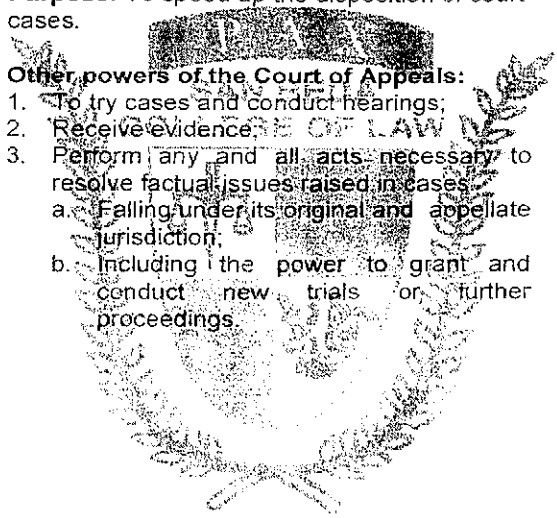
- The appeal confers upon the appellate court full jurisdiction and renders it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the law.
- An invocation of the constitutional immunity from double jeopardy will not lie in case of appeal by the accused. The reason being that when the accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court.

SECTION 12. POWER TO RECEIVE EVIDENCE

Purpose: To speed up the disposition of court cases.

Other powers of the Court of Appeals:

1. To try cases and conduct hearings;
2. Receive evidence;
3. Perform any and all acts necessary to resolve factual issues raised in cases:
 - a. Falling under its original and appellate jurisdiction;
 - b. Including the power to grant and conduct new trials or further proceedings



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SECTION 13. CERTIFICATION OR APPEAL OF CASE TO THE SC (As Amended By A.M. NO. 00-5-03-SC, effective October 15, 2004)

1. Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but REFRAIN from making an entry of judgment and forthwith certify the case and elevate its entire record to the SC for review;
2. Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to the Supreme Court;
3. In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the SC by notice of appeal filed with the Court of Appeals.

SECTION 14. MOTION FOR NEW TRIAL

- Motion for new trial based on Newly Discovered Evidence may be filed at any time AFTER the appeal from the lower court has been perfected AND BEFORE the judgment of the appellate court convicting the accused becomes final.
- Once an appeal is perfected, the trial court steps out and the appellate court steps in. A motion for new trial must then be filed with the appellate court, not with the court from whose judgment the appeal is taken.

SECTION 15. WHERE NEW TRIAL CONDUCTED

When a new trial is granted, the Court of Appeals may conduct the hearing and receive evidence as provided in *Section 12 of this Rule* or refer the trial to the court of origin.

SECTION 16. REHEARING OR RECONSIDERATION

- A motion for reconsideration shall be filed within 15 days from notice of the decision or final order of the Court of Appeals.
- A re-hearing is NOT a matter of right but a privilege to be granted, as the court sees fit, the matter being solely within its discretion.

- New questions CANNOT be presented for the first time on a motion for rehearing, especially where they are inconsistent with positions taken on the original hearing, or waived on the original submission of the case.
- A second motion for rehearing or reconsideration of a final judgment or order is NOT allowed because if parties are allowed to file as many motions for rehearing or reconsideration as their discretion or caprice suits, the proceedings would become undeterminable and unnecessarily voluminous. It shall be resolved by the Court of Appeals within 90 days from the time it is submitted for resolution.

Generally, no 2nd motion for reconsideration for the same party shall be entertained.

Except, where the first motion for reconsideration resulted in a reversal or substantial modification of the original decision or final resolution. The party adversely affected thereby may file a motion for reconsideration.

SECTION 17. JUDGMENT TRANSMITTED AND FILED IN TRIAL COURT

Transmittal of Judgment to court *a quo*:

- After the judgment has been entered, a certified copy of the entry should be transmitted to the clerk of the court of origin.
- The copy of the entry serves as the formal notice to the court from which the appeal was taken of the disposition of the case in the appellate court, so that the judgment may be executed and/or placed or noted in the proper file.

SECTION 18. APPLICATION OF CERTAIN RULES IN CIVIL TO CRIMINAL CASES

The corresponding amendment was made pursuant to the changes introduced under the 1997 Rules of Procedure.

Note: *Rule 47 (Annulment of Judgments of Final Judgment and Resolutions) does NOT apply to criminal cases. The appropriate remedy for lack of jurisdiction or extrinsic fraud is CERTIORARI (Rule 65) or HABEAS CORPUS (Rule 102).*

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RULE 125. PROCEDURE IN THE SUPREME COURT

SECTION 1. UNIFORM PROCEDURE

The procedure in the Supreme Court in original, as well as in appealed cases, is the same as in the Court of Appeals, **except** when otherwise provided by the Constitution or the law.

A case may reach the Supreme Court in the following manner:

1. Automatic review;
2. Ordinary appeal;
3. Petitioner for review on certiorari.

Effect of Direct Appeal to the Supreme Court on Question of Law in Criminal Cases:

- A direct appeal to the Supreme Court on questions of law – in criminal cases in which the penalty imposed is not death or life imprisonment – precludes a review of the facts.
- Cases involving both questions of law and fact come within the jurisdiction of the Court of Appeals.
- Appeal to the SC is NOT A MATTER OF RIGHT, but a matter of sound judicial discretion. The prescribed mode of appeal is by certiorari.

SECTION 2. REVIEW OF DECISIONS OF THE COURT OF APPEALS

General Rule: Findings of fact in the CA is conclusive upon the SC

Exceptions:

1. When the findings are grounded entirely on speculation, surmises or conjectures;
2. When the interference made is manifestly mistaken, absurd or impossible;
3. When there is grave abuse of discretion;
4. When the judgment is based on misapprehension of facts;
5. When the findings of fact are conflicting;
6. When in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. When the findings are contrary to the trial court;
8. When the findings are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioner's main and reply

- briefs are not disputed by the respondent;
10. When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and
 11. When the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Development Bank of the Philippines v. Traders Royal Bank and Privatization and Management Office, G.R. No. 171982, August 18, 2010*).

Question of Law is when the doubt or difference arises as to what the law is on a certain state of facts. It must not involve an examination of the probative value of the evidence presented by the litigants or any of them.

Question of Fact is when the doubt or difference arises as to the truth or the falsehood of alleged facts.

SECTION 3. DECISION IF OPINION IS EQUALLY DIVIDED

- The Supreme Court, as the Constitution ordains, shall be composed of a Chief Justice and 14 Associate Justices. It may sit *en banc* or in its discretion, in divisions of 3, 5, or 7 members (*Section 4(1), Article VIII, 1987 Constitution*).
- A criminal case shall be reheard by the Supreme Court when the Court *en banc* is equally divided in opinion or the necessary majority cannot be had, if no decision is reached the conviction of the lower court shall be reversed and the accused acquitted.
- According to the Constitution, only the Supreme Court *en banc* may modify or reverse a doctrine or principle of law or ruling laid down by the Court in a decision rendered *en banc* or in division.

RULE 126. SEARCH AND SEIZURE

SECTION 1. SEARCH WARRANT DEFINED

Search Warrant 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.

While it may be true in general that a man's house is his castle, it is equally true that he

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may not use that castle as a citadel for aggression against his neighbors, nor can he within its walls create such disorders as to affect their peace (*U.S. vs. Vallejo*, 11 Phil. 193).

Elements of Search Warrant

1. Order in writing;
2. Signed by the judge in the name of the People of the Philippines;
3. Commanding a peace officer to search personal property;
4. Bring the property before the court.

Nature of Search Warrants

1. Search warrants are in the nature of criminal process akin to a writ of discovery and may be invoked only in furtherance of public prosecutions;
2. Search warrants have no relation to civil process or trials; and
3. They are not available to individuals in the course of civil proceedings;
4. It is not for the maintenance of any mere private right;
5. It is interlocutory in character – it leaves something more to be done, the determination of the guilt of the accused.

Search and Seizure

The term **search** as applied to searches and seizures is an examination of a man's house or other buildings or premises or of his person with a view to the discovery of contraband or illicit or stolen property or some evidence of guilt to be used in the prosecution of a criminal action for some offense with which he is charged.

A **seizure** is the physical taking of a thing into custody.

Warrant of Arrest	Search Warrant
Order directed to the peace officer to execute the warrant by taking the person stated therein into custody that he may be bound to answer for the commission of the offense.	Order in writing in the name of the RP signed by the judge and directed to the peace officer to search personal property described therein and to bring it to court. (Sec. 1)
Does not become stale.	Validity is for 10 days only. (Sec. 9)
May be served on any day and at any time of day or night. (Sec. 6, Rule 113).	To be served only in daytime unless the affidavit alleges that the property is on the person or in the place to be searched. (Sec. 9)

Warrant of Arrest	Search Warrant
Searching examination of witnesses is not necessary	Must personally conduct an examination of the complainant and the witnesses
Judge is merely called upon to examine and evaluate the report of the fiscal and the evidence	Examination must be probing. Not enough to merely adopt the questions and answers asked by a previous investigator

General Warrant is a search warrant which vaguely describes and DOES NOT particularize the personal properties to be seized without a definite guideline to the searching team as to what items might be lawfully seized, thus giving the officers of the law discretion regarding what articles they should seize.

Note: A general warrant is NOT VALID as it infringes on the constitutional mandate requiring particular description of the things to be seized.

Scatter-Shot Search Warrant is a search warrant issued for more than one offense (*Not valid because it is in violation of the Constitution*).

There must be strict compliance with the constitutional and statutory requirements. Otherwise, the search warrant shall be void. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify under it (*People vs. Veloso*, G.R. No. 23051, Oct. 20, 1925).

SECTION 2. COURT WHERE APPLICATION FOR SEARCH WARRANT SHALL BE FILED

General Rule: It should be filed with the court within whose territorial jurisdiction the crime was committed.

Exceptions:

1. 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.
2. 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.
3. In case of search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the

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Intellectual Property Code, the *Anti-Money Laundering Act of 2001*, the *Tariff and Customs Code*, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court, the Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs OF MANILA AND QUEZON CITY shall have authority to act on applications filed by the NBI, PNP and the Anti-Crime Task Force (ACTAF). The applications shall be endorsed by the heads of such agencies or their respective duly authorized officials and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts.

SECTION 3. PERSONAL PROPERTY TO BE SEIZED

Kinds of property to be seized by virtue of a warrant:

1. Subject of the offense;
2. Stolen or embezzled and other proceeds or fruits of the offense;
3. The means used or intended to be used for committing an offense.

Note: The rule does not require that the property to be seized should be owned by the person against whom the search warrant is directed. It may or may not be owned by him. It is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized (*Burgos vs. Chief of Staff*, G.R. No. L-65334, December 26, 1984).

In a search incidental to an arrest even WITHOUT a warrant the person arrested may be searched for:

1. Dangerous weapons; and
2. Anything which may be used as proof of the commission of an offense.

SECTION 4. REQUISITES FOR ISSUING SEARCH WARRANT

Requisites:

1. Must be issued upon probable cause;
2. Probable cause must be determined by the issuing judge personally;
3. The judge must have personally

examined, in the form of searching questions and answers, in writing and under oath, the applicant and his witnesses on facts personally known to them;

4. The warrant issued must particularly describe the place to be searched and the persons or things to be seized;

Note: A search warrant may be said to particularly describe the things to be seized

- a. when the description therein is as specific as the circumstances will ordinarily allow; or
 - b. when the description expresses a conclusion of fact – not of law – by which the warrant officer may be guided in making the search and seizure; or
 - c. when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (*Uy v. Bureau of Internal Revenue*, G.R. No. 129651, October 20, 2000).
5. It must be in connection with one specific offense;
 6. The sworn statements together with the affidavits submitted by witnesses must be attached to the record (*Prudente vs. Dayrit*, G.R. No. 82870, Dec. 14, 1989);
 7. It must not have been issued more than 10 days prior to the search made pursuant thereto.

Party who may question validity of search and seizure:

Well settled is the rule that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties (*Stonehill vs. Dickio*, G.R. No. L-19550, June 19, 1967).

Remedies from an Unlawful Search

1. A motion to quash the search warrant;
2. A motion to suppress as evidence the objects illegally taken (EXCLUSIONARY RULE – any evidence obtained through unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding) and
3. Replevin, if the objects are legally possessed

Note: The remedies are alternative. If a motion to quash is denied, a motion to suppress cannot be availed of subsequently.

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Where the search warrant is a **PATENT NULLITY**, *certiorari* lies to nullify the same.

- The illegality of the search warrant does not call for the return of the things seized, the possession of which is prohibited by law. **HOWEVER**, those personalities seized in violation of the constitutional immunity whose possession is not of itself illegal or unlawful ought to be returned to their rightful owner or possessor.
- Any evidence obtained in violation of the constitutional immunity against unreasonable searches and seizures are inadmissible for any purpose in any proceeding (*Section 2, Article III, 1987 Constitution*).
- There is no need for a certification of non-forum shopping in the application for search warrant. The Rules of Court as amended requires such certification only from initiatory pleadings, omitting any mention of "applications" (*Savage v. Judge Taypin, G.R. No. 134217, May 11, 2000*).

Probable Cause refers to the facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense in the place sought to be searched (*Burgos vs. Chief of Staff, G.R. No. L-65334, December 26, 1984*).

Basis of Probable Cause: The basis must be the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay. The test of sufficiency of a deposition or affidavit is whether it has been drawn in a manner that perjury could be charged thereon and the affiant be held liable for damage caused.

Note: Mere affidavits of the complainant and his witnesses are not sufficient. The judge has to take depositions in writing of the complainant and the witnesses and to attach them to the record (*Mata vs. Bayona, G.R. No. L-50720, March 26, 1984*).

Factors in Determination of Probable Cause:

1. Time of the application in relation to the alleged offense committed. The nearer the time at which the observation of the offense is alleged to have been made, the more reasonable the conclusion of establishment of probable cause (*Asian Surety Insurance vs. Herrera, G.R. No. L-25232, December 20, 1973*);

2. Need for competent proof of particular acts or specific omissions in the ascertainment of probable cause (*Stonehill vs. Diokno, G.R. No. L-19550, June 19, 1967*)
3. The facts and circumstances that would show probable cause must be the best evidence that could be obtained under the circumstances. If such best evidence cannot be obtained, the applicants must show a justifiable reason therefor upon judge's examination (*People vs. Judge Estrada, G.R. No. 124461, Sept. 25, 1998*)

Who Determines Probable Cause

Probable cause must be determined personally by a judge (*Art. 3, Sec. 2, 1987 Constitution*).

Exception: Deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation (*Harvey vs. Defensor-Santiago, G.R. No. 82544, June 28, 1988*).

Particularly describing the place to be searched and the persons or things to be seized: The purpose of the rule is to leave the officers of the law with no discretion regarding what articles they shall seize, to the end that "unreasonable searches and seizures" may not be made – that abuses may not be committed (*Stonehill vs. Diokno, G.R. No. L-19550, June 19, 1967*).

Test to determine particularity:

1. When the description therein is as specific as the circumstances will ordinarily allow (*People vs. Rubio, G.R. No. L-35500, October 27, 1932*);
2. When the description expresses a conclusion of fact, not of law, which the warrant officer may be guided in making the search and seizure.
3. When the things described are limited to those which bear direct relation to the offense for which the warrant is being issued.

Note: The warrant must name the person upon whom it is to be served **EXCEPT** in those cases where it contains a *descriptio personae* such as will enable the officer to identify the person. The description must be sufficient to indicate clearly the proper person upon whom it is to be served (*People vs. Veloso, G.R. No. L-23051, Oct. 20, 1925*).

The absence of a probable cause for a particular article does not generally invalidate

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the warrant as a whole but may be severed from the rest which meets the requirements of probable cause and particularity (*People v. Salanguit*, G.R. Nos. 133254-55, April 15, 2001).

"Multi-factor Balancing Test" in determining Probable Cause: One which requires the officer to weigh the manner and intensity of the interference on the right of the people, the gravity of the crime committed, and the circumstances attending the incident (*Allado v. Judge Diokno*, G.R. No. 113630, May 5, 1994).

SECTION 5. EXAMINATION OF COMPLAINANT; RECORD

Manner on how a judge should examine a witness to determine the existence of probable cause:

1. The judge must examine the complainant and witnesses personally;
 2. The examination must be under oath;
 3. The examination must be reduced to writing in the form of searching questions and answers (*Marinas vs. Siuchi*, G.R. Nos. L-25707 & 25753-25754, May 14, 1981);
 4. Examination must be on the facts personally known to the applicant and his witnesses;
 5. It must be probing and exhaustive, not merely routinary or pro forma (*Roan vs. Gonzalez*, G.R. No. 71410, Nov. 25, 1986);
 6. It is done ex-parte and may even be held in the secrecy of chambers (*Mata vs. Bayona*, G.R. No. L-50720, 26. March 1984).
- Such personal examination is necessary in order to enable the judge to determine the existence or non-existence of a probable cause.
 - The matters that may be raised in a motion to quash a search warrant must not go beyond the immediate, limited issue of the existence or non-existence of probable cause at the time of the issuance of the warrant. Matters of defense should properly be raised at the criminal action and not at the hearing of the motion to quash the search warrant (*Department of Health vs. Sy Chi Siong, Inc., et al.*, G.R. No. 85289, February 20, 1989).

SECTION 6. ISSUANCE AND FORM OF SEARCH WARRANT

Issuance of Search Warrant

The Constitution ordains that no warrant shall issue EXCEPT upon probable cause supported by oath or affirmation.

Form of Search Warrant

The search warrant must be in writing and must contain such particulars as the name of the person against whom it is directed, the offense for which it was issued, the place to be searched and the specific things to be seized.

Note: Search warrant cannot issue against diplomatic officers (*WHO vs. Aquino*, G.R. No. L-35131, Nov. 29, 1972).

SECTION 7. RIGHT TO BREAK DOOR OR WINDOW TO EFFECT SEARCH

The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

General Rule: Knock and announce Principle

Officers executing a search must do the following acts:

1. Announce their presence
2. Identify themselves to the accused and to the persons who rightfully have possession of the premises to be searched
3. Show to them the search warrant
4. Explain the warrant in a language or dialect known and understood by them

Exceptions: When unannounced intrusion is permissible: **SAN BEDA**

1. Person in premises refuses to open it upon demand.
2. Person in the premises already knew of the identity and authority of the officers.
3. When officers have an honest belief that there is an imminent danger to life and limb.
4. When those in the premises, aware of the presence of someone outside, are then engaged in activities which justifies the officers to believe that an escape or the destruction of evidence is imminent.

Note: This list of exceptions is neither conclusive nor exclusive.

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SECTION 8. SEARCH OF HOUSE, ROOM, OR PREMISES TO BE MADE IN PRESENCE OF TWO WITNESSES

In order to insure that the execution of the warrant will be fair and reasonable, and in order to insure that the officer conducting the search shall NOT exceed his authority or use unnecessary severity in executing the search warrant, as well as for the officer's own protection against unjust accusations, it is required that the search be conducted in the presence of the:

1. Lawful occupant of the place to be searched; or
2. Any member of his family;
3. In their absence, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

Note: This requirement is MANDATORY.

SECTION 9. TIME OF MAKING SEARCH

General Rule: A search warrant must be served at daytime.

Exception: A search warrant may be made at night when it is positively asserted in the affidavit that the property is on the person or in the place ordered to be searched. The affidavit making such assertion must itself be sufficient as to the fact so asserted, for if the same is based upon hearsay, the general rule shall apply.

Exceptions to the exception:

1. If there are emergencies
2. Property is on the person or place to be searched
3. Generally, all instances of valid warrantless search

- A search warrant conducted at night without direction to that effect is an unlawful search. The same rule applies where the warrant left blank the "time" for making the search.
- A public officer or employee who exceeds his authority or uses unnecessary severity in executing the warrant is liable under *Article 129 of the Revised Penal Code*.

SECTION 10. VALIDITY OF SEARCH WARRANT

- Ten (10) days from its date, thereafter, it shall be void. A search warrant can be used only once, thereafter it becomes *functus officio*.

- While, under *Section 10*, a search warrant has a validity of 10 days, NEVERTHELESS, it CANNOT be used every day of said period and once articles have already been seized under said warrant, it CANNOT be used again for another search and seizure, **except** when the search conducted on one day was interrupted, in which case the same may be continued under the same warrant the following day if not beyond the ten (10) day period (*Uy Kheylin vs. Villareal*, 42 Phil 886).

SECTION 11. RECEIPT FOR THE PROPERTY SEIZED

SECTION 12. DELIVERY OF PROPERTY AND INVENTORY THEREOF TO COURT; RETURN AND PROCEEDINGS THEREON

Duties of the executing officer:

1. Deliver the property seized; and
2. Make a True Inventory thereof to the judge who issued the warrant.

Within 10 days after issuance of Search Warrant, the judge shall ascertain if a return has been made:

If it has been made: The judge shall ascertain whether *Sec.11 of Rule 126* has been complied with and shall require delivery of the property seized.

If it has not been made: The judge shall summon the executing officer and require the latter to explain.

SECTION 13. SEARCH INCIDENT TO LAWFUL ARREST

When may there be a search without warrant:

1. In times of war within the area of military operation;
2. As an incident of a lawful arrest, the arrest must precede the search and not the reverse (*People vs. Guizon*, G.R. No. 115431, April 18, 1996);
3. Stop and Frisk measures (*People vs. Montilla*);
4. Plain view doctrine when there are prohibited articles open to eye and hand (*Roan vs. Gonzalez*, G.R. No. 71410, Nov. 25, 1986);
5. When there is consent (*People vs. Kagui Malasugui*, G.R. No. L-44335, July 30, 1936);
6. Check Points under extraordinary circumstances (*Valmonte vs. Villa*, G.R.

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- No. 83988, Sept. 29, 1989);
7. When it is an incident of inspection;
 8. Under the Tariff and Customs Code for purposes of enforcing customs and tariff laws;
 9. Searches and seizures of vessels and aircraft; this extends to the warrantless search of a motor vehicle for contraband;
 10. Inspections or body checks in airports;
 11. Emergency (based on probable cause under extraordinary circumstances);
 12. Enforcement of health and sanitary laws.

Note: The search and seizure of vessels and aircraft may validly be made without a search warrant because the vessel or aircraft can quickly move out of the jurisdiction before such warrant could be secured (*People vs. Lo Ho Wing*, G.R. No. 88017, January 21, 1991).

Searches incident to lawful arrest: This right includes searching the person who is arrested, in order to find and seize the things connected with the crime, as its fruits or as the means by which it was committed.

- Search made without a warrant cannot be justified as an incident of arrest unless the arrest itself was lawful.
- A search is not incidental to the arrest unless the search is made at the place of arrest, contemporaneously with the arrest.
- The area that may be validly searched is limited to the area within the immediate control of the person arrested.

Immediate Control Test

A search incidental to a lawful warrantless arrest may extend beyond the person of the one arrested to include the premises or surroundings under his immediate control (*People vs. Musa*, G.R. No. 95329, January 27, 1993).

Reason: To protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. However, the exception should not be strained beyond what is needed to serve its purpose. (*Valeroso v. Court of Appeals* G.R. No. 164815, September 3, 2009)

Requisites of Plain View:

1. A prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

2. The evidence was inadvertently discovered by the police who had the right to be where they are;
3. The evidence must be immediately apparent; and
4. There is no need for further search. (*People vs. Sarap*, G.R. No. 132165, March 26, 2003)

Elements of a Valid Consent Search

Consent cannot be presumed simply because the accused failed to object to the search. To constitute a waiver, it must appear:

1. The right exists;
2. The person involved had knowledge, actual or constructive, of the existence of such rights;
3. Actual intention to relinquish such rights. (*People vs. Burgos*, G.R. No. 92739, Aug. 02, 1991)

Totality of Circumstances Principle

The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. One must consider the following characteristics of the person giving consent and the environment in which consent is given:

1. The age of the defendant;
2. Whether he was in a public or secluded location;
3. Whether he objected to the search or passively looked on;
4. The education and intelligence of the defendant;
5. The presence of coercive police procedures;
6. The defendant's belief that no incriminating evidence will be found;
7. The nature of the police questioning;
8. The environment in which the questioning took place; and
9. The possibly vulnerable subjective state of the person consenting.

It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given (*Cabales v. Court of Appeals*, G.R. No. 136292, January 15, 2002).

Stop and Frisk

Its object is either to determine the identity of a suspicious individual or to maintain the status quo momentarily while the police officer seeks to obtain more information. The officer may search the outer clothing of the person in an attempt to discover weapons which might be used to assault him (*Terry vs. Ohio*, 392 U.S.

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1, *Manalili vs. CA*, G.R. No. 113447, Oct. 09, 1997).

Stop and Frisk serves a two-fold interest:

1. The general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior, even without probable cause; and
2. The more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer (*Malacat v. Court of Appeals*, G.R. No. 123595, December 12, 1997).

A *protective frisk* is different from an exploratory search or a search for evidence since the latter two require a probable cause.

Legality of Seizure

The remedy for questioning the validity of a search warrant can only be sought in the court that issued it, not in the sala of another judge of concurrent jurisdiction. **Except** where there is already a case filed, the latter shall acquire jurisdiction to the exclusion of other courts.

Waiver of Legality and Admissibility

Objection to the legality of the search warrant, or as to the admissibility of the evidence obtained is deemed **WAIVED** where no objection of the search warrant was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant (*Demaisip vs. CA*, *Demaisip vs. CA*, G.R. No. 89393, Jan. 25, 1991).

Rules on Reasonableness of Search

What constitutes a reasonable or unreasonable search or seizure in any particular case is purely a judicial question.

Such is determinable from a consideration of the circumstances involved, including the following:

- The purpose of the search;
- Presence or absence of probable cause;
- Manner in which the search and seizure was made;
- Place or thing searched;
- Character of the articles procured.

Searches and seizure inside a home are presumptively unreasonable.

Constitutional prohibition against unlawful searches and seizure applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. It could thus only be invoked against the State.

SECTION 14. A MOTION TO QUASH A SEARCH WARRANT OR TO SUPPRESS EVIDENCE; WHERE TO FILE

In What Court may a Motion to Quash be filed:

1. May be filed and acted upon **ONLY** by the court where the action has been instituted;
2. If no criminal action has been instituted, it may be filed in and resolved by the court that issued the search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the **LATTER** court.

Remedies of Party adversely affected by a Search Warrant:

1. Motion to quash the search warrant with the issuing court; or
2. Motion to suppress evidence with the court trying the criminal case.

Note: However, the remedy is **alternative**, not cumulative. The Court first taking cognizance of the motion does so to the exclusion of the other, and the proceedings thereon are subject to the Omnibus Motion Rule and the rule against forum-shopping (*People v. Court of Appeals*, G.R. No. 126379, June 26, 1998).

A third option would be to file an action for **REPLEVIN** if the properties seized were lawfully possessed by the person from whom it was seized.

RULE ON SEARCH AND SEIZURE IN CIVIL ACTIONS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS
(A.M. No. 02-1-06-SC, January 30, 2002)

This Rule governs the provisional seizure and impounding of documents and articles in pending and intended civil actions for the purpose of preventing infringement and preserving relevant evidence in regard to alleged infringement under RA 8293 or the *Intellectual Property Code* and the *TRIPS Agreement*.

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The writ of search and seizure

Where any delay is likely to cause irreparable harm to the intellectual property holder or where there is demonstrable risk of evidence being destroyed, the intellectual property right holder or his duly authorized representative in a pending civil action for infringement or who intends to commence such an action may apply *ex parte* for the issuance of a writ of search and seizure directing the alleged infringing defendant or expected adverse party to admit into his premises the persons named in the order and to allow the search, inspection, copying, photographing, audio and audiovisual recording or seizure of any document and article specified in the order (Section 2).

Where application filed

With any of the Regional Trial Courts of the judicial region designated to try violations of intellectual property rights stationed at the place where the alleged violation occurred or is to occur, or the place to be searched, at the election of the applicant. PROVIDED, however, that where the complaint for infringement has already been filed, the application shall be made in the court where the case is pending (Section 3).

Grounds for the issuance of the order:

1. The applicant is the right holder or his duly authorized representative;
2. There is probable cause to believe that the applicant's right is being infringed or that such infringement is imminent and there is a *prima facie* case for final relief against the alleged infringing defendant or expected adverse party;
3. Damage, potential or actual, likely to be caused to the applicant is irreparable;
4. There is demonstrable risk of evidence that the alleged infringing defendant or expected adverse party may destroy, hide or remove the documents or articles before any application *inter partes* can be made; and
5. The documents and articles to be seized constitute evidence of the alleged infringing defendant's or expected adverse party's infringing activity or that they infringe upon the intellectual property right of the applicant or that they are used or intended to be used as means of infringing the applicant's intellectual property right (Section 6).

Contents of the Writ

1. An order to the alleged infringing defendant, expected adverse party or to the person who appears to be in charge or

in control of the premises or residing or working therein to permit the persons named in the writ to enter into the premises for the purpose of searching, inspecting, copying, or removing from the premises and transferring to the custody of the sheriff and subject to the control of the court the subject documents and articles;

2. An order to the alleged infringing defendant, expected adverse party or to the person in charge or in control of the premises to disclose to the sheriff serving the writ the location of the documents and articles subject of the writ;
3. The period when the writ shall be enforced which in no case shall be more than ten (10) days from the date of issuance by the court;
4. The names of the applicant or his agent or representative and the Commissioner who shall supervise the enforcement of the writ; and
5. Other terms and conditions that will insure the proper execution of the writ with due regard to the rights of the alleged infringing defendant or expected adverse party (Section 8).

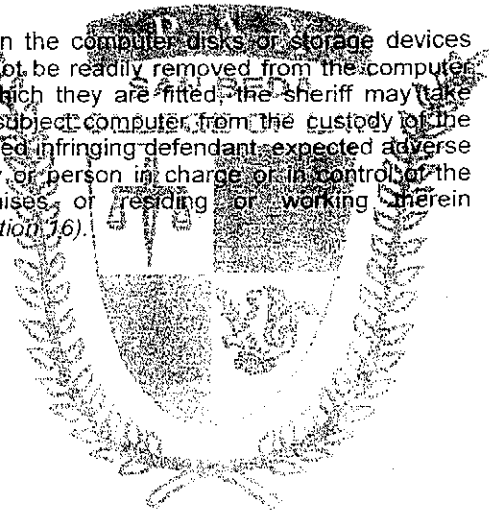
It shall also contain a warning that violation of any of the terms and conditions of the writ shall constitute contempt of court.

Seizure of Computer Disks Other Storage Devices.

The seizure of a computer disk or any storage device may be executed in any of the following manner:

1. By the physical taking thereof;
2. By copying its contents in a suitable device or disk provided by the applicant; or
3. By printing out the contents of the disk or device with the use of a printer.

When the computer disks or storage devices cannot be readily removed from the computer to which they are fitted, the sheriff may take the subject computer from the custody of the alleged infringing defendant, expected adverse party or person in charge or in control of the premises, or residing or working therein (Section 16).



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**RULE 127: PROVISIONAL REMEDIES IN
CRIMINAL CASES**

**SECTION 1. AVAILABILITY OF
PROVISIONAL REMEDIES**

Nature of Provisional Remedies:

1. Those to which parties' litigant may resort for the preservation or protection of their rights or interests and for no other purposes during the pendency of the action;
 2. They are applied to a pending litigation for the purpose of securing the judgment or preserving the *status quo*, and in some cases after judgment, for the purpose of preserving or disposing of the subject matter (*Calo vs. Roldan*, G.R. No. L-252, March 30, 1946).
- The requisites and procedure for availing of these provisional remedies shall be the same as those for civil cases.
 - The provisional remedies under this rule are proper only where the civil action for the recovery of civil liability *ex delicto* has not been expressly waived or the right to institute such civil action separately is not reserved in those cases where reservation may be made.
 - Where the civil action arising from a criminal offense is suspended by the filing of the criminal action, the court wherein said civil case is pending can issue the aforesaid auxiliary writs since such orders do not involve a determination of the merits of the case (*Babala vs. Abaño*, G.R. No. L-4600, February 28, 1952).

Kinds of Provisional Remedies:

1. Attachment;
2. Injunction;
3. Receivership;
4. Delivery of personal property;
5. Support *pendente lite*.

SECTION 2. ATTACHMENT

Who may apply for preliminary attachment

The aggrieved party in whose behalf the civil aspect of the criminal action is prosecuted may apply for the issuance of a writ of preliminary attachment, he being the person primarily and directly interested thereby. The prosecutor in the criminal action may make such an application in behalf of or for the protection of the interest of the offended party.

Notice to adverse party not required

No notice to the adverse party, or hearing on the application is required before a writ of preliminary attachment may issue as a hearing would defeat the purpose of the provisional remedy. The time which such a hearing would take, could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issue and the only requisites from the issuance of a writ of preliminary attachment are the affidavit and bond of applicant (*Mindanao Savings, etc. vs. Court of Appeals*, 172 SCRA 480).

- Attachment may be availed of ONLY when the civil action arising from the crime has not been expressly waived or not reserved and only in the following cases:
 1. When the accused is about to abscond from the Philippines;
 2. When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
 3. When the accused has concealed, removed, or disposed of his property, or is about to do so; and
 4. When the accused resides outside the Philippines.
 5. When the accused is about to abscond from the Philippines;
 6. When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer or a corporate officer, or an attorney, broker, or agent or clerk in the course of employment, or by a person in a fiduciary capacity;
 7. When the accused has concealed, removed or about to dispose of his property; and
 8. When the accused resides abroad.

