

SPECIAL
PENAL LAWS

VOLUME I

ATTY. VICTOR T. TULALIAN

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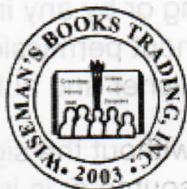
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SPECIAL PENAL LAWS

VOLUME I

1

ATTY. VICTOR T. TULALIAN



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DEDICATION

This book is dedicated to my mother and father:

Clarita and Salvador

FOREWORD

The aim of this modest work is to expose Criminology and Criminal Justice students, as well as the general reader, to some (selected) Special Penal Laws of the Philippines—and to their respective salient provisions, punishable/punished acts and imposable penalties.

Also included in this book are basic principles, settled doctrines and Supreme Court decisions/rulings concerning the selected special penal laws.

I would like to express my gratitude to my wife Mary Jane and my children, Salvador II and Paula Ymmanuel, for their pure love and continuing support of my writing. I am grateful as well to Mesdames Beth Ocampo and Ellen Din, President/CEO and Marketing Head, respectively, of Wiseman's Books Trading, Inc., for their invaluable guidance in the realization of this book.

Above all, I would like to offer this work to God Almighty who has given me the strength to pursue difficult tasks.

9 January 2020, San Juan City, Metro Manila.

VICTOR T. TULALIAN

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CHAPTER I

SPECIAL PENAL LAW AND THE REVISED PENAL CODE: INTRODUCTION

"We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean."

— JUSTICE HOLMES, in *Roschen v. Ward*,
279 U.S. 337, 339, 73 L.Ed. 722, 728 (1929)

I. Nullum Crimen Nulla Poena Sine Lege

In Philippine jurisdiction, the act becomes criminal only if there is a law specifically penalizing it. This is in consonance with the familiar maxim in Criminal Law and International Criminal Law: *Nullum Crimen Nulla Poena Sine Lege*. There is no crime where there is no law punishing it. [See *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000]

In *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994, the Supreme Court held that:

"Penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. If the statute is ambiguous and admits of

two reasonable but **contradictory constructions**, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.

“The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts xxx The law does not operate in vacuo nor should its applicability be determined by circumstances in the abstract.” (Emphasis added)

“It is fundamental that, in criminal prosecutions, **every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to apprise the accused of the nature of accusation against him,** which is part and parcel of the rights accorded to an accused enshrined in Article III, Section 14 (2) of the 1987 Constitution. Section 6, Rule 110 of the Rules of Court, in turn, pertinently provides: Section 6. Sufficiency of complaint or information.—A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. xxx Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. **The Information must allege clearly and accurately the elements of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.**” [Quimvel v. People, 823 SCRA 192, 222-223 (2017)] (Emphasis supplied)

II. Special Law

If the crime is punished by the Revised Penal Code (RPC), it is called a felony; if by a special law, it is an offense; and if by an ordinance, it is called an infraction of an ordinance. [See Gregorio, Fundamentals of Criminal Law Review (1997 Ninth Edition), p. 1]

For purposes of criminal law, the term "special law" is one which is not amendatory of the provisions of the RPC, but which defines and punishes offenses not covered by the latter. [US v. Serapio, 23 Phil. 584; Romualdez v. Marcelo, G.R. No. 165510-33, July 28, 2006; *see also* Sec. 3, Act 3326] (But the provisions of the RPC are supplementary to such special law [Art. 10, RPC].)

Violation of Special Penal Laws are generally referred to as a *malum prohibitum* or an act that is wrong because it is prohibited. Thus, no criminal intent is needed in order to find a person liable for crimes punished under Special Penal Laws. As long as the act is committed, then it is punishable as a crime under the law.

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. In intent to commit the crime, there must be criminal intent; in intent to perpetrate the act, it is enough that the prohibited act is done freely and consciously. [Elenita C. Fajardo v. People, G.R. No. 190889, January 10, 2011]

However, if a special law is an amendment to a provision of the RPC, the act is considered a felony. Thus, despite the existence of PD 533 (the special law that amended Arts. 308, 309, and 310 of the RPC), cattle rustling remains *malum in se*. [*Vide*: Jorge Taer v. The Hon. Court of Appeals, G.R. No. 85204, June 18, 1990] Consequently, the provisions of the RPC are made applicable to such special law. [See Palattao, The Revised Penal Code Made Easy, Book I (2005 Edition), p. 69]

Further, it should not be noted when the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law. Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed. [See Garcia v. CA, G.R. No. 157171, March 14, 2006; *see also* People v. Sunico, et al., CA 50 O.G. 5880; *see also* Sandoval, Pointers in Criminal Law, p. 14] Physical abuse of

a child is inherently wrong, rendering material the existence of a criminal intent on the part of the offender. [Festin, Bar Review Guide to Criminal Law (Second Edition), p. 220] Piracy and brigandage are punishable under PD No. 532, a special law. Although these acts are punished under special law, they are inherently wrong, thus they are *mala in se*. Hence, good faith is a defense. [See Nojara, Special Penal Laws: Concepts and Jurisprudence (2019 Edition), p. 4] The crime of plunder is a *malum in se*. [See Estrada v. Sandiganbayan (G.R. No. 148560, November 19, 2001), wherein the Supreme Court held that RA No. 7080, otherwise known as the Plunder Law, as amended by RA 7659, is constitutional.] Under RA No. 7659, plunder is a heinous offense punishable by *reclusion perpetua* to death.

III. Mala In Se and Mala Prohibita, Distinguished

In *mala in se*: (1) The basis of criminal liability is the moral fiber of the offender, hence, good faith or lack of criminal intent is a defense; (2) Modifying circumstances are taken into account in imposing the penalty on the offender; (3) The degree of participation determines the penalty imposable; (4) The stage of accomplishment affects the penalty imposed; (5) Generally, they are punishable under the RPC; and (6) Generally, they are crimes involving moral turpitude. [See Boado, Notes and Cases on Special Penal Laws, pp. 1-2]

On the other hand, in *mala prohibita*: (1) The basis of criminal liability is the offender's voluntariness, or whether he committed the prohibited act wilfully (except when intent is an element of the crime such as in Sec. 3 (e) of RA 3019, the Anti-Graft and Corrupt Practices Act which requires that the punishable act be committed by the public official with evident bad faith); (2) Modifying circumstances are not considered since the act or omission is made evil only by the special law; (3) The degree of participation of the offenders do not affect their liability; (4) The stage of accomplishment considered is only the consummated stage; (5) Generally, they involve violations of special penal laws; and (6) Generally, they do not involve moral turpitude. [Id.]

IV. As A Rule, A Mala In Se Felony Cannot Absorb Mala Prohibita; Offenses And Felonies Cannot Be Complexed Under Article 48 of RPC

A *mala in se* felony cannot absorb *mala prohibita*. Thus, more than one crime will be charged if an act violates both the Revised Penal Code and Special Penal Law, e.g. BP 22 and estafa, illegal recruitment and estafa, and torture and murder, homicide, physical injuries. The exception to the rule is when the special penal law expressly allows such absorption. If the special law allows absorption, then only crime is committed. For example, under RA 7610, if the lascivious conduct or sexual abuse is committed against a minor who is less than 12 years of age, the offender shall be charged and prosecuted for rape or acts of lasciviousness. However, the penalty is the one provided by the special penal law. [Nojara, Special Penal Laws: Concepts and Jurisprudence (2019 Edition), p. 17] Further, offenses and felonies cannot be complexed under Article 48 of the RPC. However, there is a special complex crime of carnapping with homicide as the special penal law allows it. [Id. at 17-18]

V. If the Special Penal Law Adopts The Nomenclature of the Penalties Under the RPC

Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law, provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. [Quimvel v. People, G.R. No. 214497, April 18, 2017, 823 SCRA 192] However, as clarified by the Supreme Court in the landmark ruling of *People v. Simon* (234 SCRA 555 [1994]), the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. For example, RA No. 7610. Although a special law, it adopted the penalty defined in RPC. Under such circumstance, the legal effects under the system of penalties native to the RPC would also necessarily apply to the special law.

However, the Simon principle is not applicable if the crime committed involved dangerous drugs because RA No. 9165 has a special rule on the application of the provisions of the RPC. Under

Section 98 of RA No. 9165, notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be reclusion perpetua to death. [See Campanilla, Special Penal Laws (2019 Edition), pp. 401-402] To note, under Sec. 59 of RA No. 9344 (Juvenile Justice and Welfare Act of 2006), as amended, “[T]he provisions of the Revised Penal Code, as amended by Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.”

VI. In Mala Prohibita, Without “Knowledge” and “Voluntariness” There Is No Crime

It bears stressing that in *mala prohibita*, while there is no need of the criminal intent, there must be “knowledge.” Without the “knowledge” and “voluntariness” there is no crime. [Cf. Veroy v. Layagne, 210 SCRA 97; US v. Jose and Tan Bo, 34 Phil. 715]

“In non-possessory *mala prohibita* offenses, ‘mere performance of the prohibited act’ does not necessarily justify imposition of the penalty provided by the special law. It is essential for the court to determine whether imposition of such penalty upon the respondent will best serve the best interest of the allegedly wronged society with the noble purpose of the law. Conviction should not glorify the practice of the ‘actual wrongdoer’ if he is other than the accused.” [The Malum Prohibitum Doctrine in Philippine Criminal Law, 223 SCRA 615] “The objective of retribution of a wronged society should be directed against the ‘actual... wrongdoer.’” [Magno v. Court of Appeals, et al., 200 SCRA 471]