G.R. No. 260374 — FR. CHRISTIAN B. BUENAFE, FIDES M. LIM, MA. EDELIZA P. HERNANDEZ, CELIA LAGMAN SEVILLA, ROLAND C. VIBAL, AND JOSEPHINE LASCANO, *petitioners, versus* **COMMISSION ON ELECTIONS, FERDINAND ROMUALDEZ MARCOS, JR., THE SENATE OF THE PHILIPPINES, represented by the Senate President, THE HOUSE OF REPRESENTATIVES, represented by the Speaker of the House of Representatives,** *respondents.*

G.R. No. 260426 — BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERILLA REPUNO, JOANNA KINTANAR CARIÑO, ELISA TITA PEREZ LUBI, LIZA LARGOZA MAZA, DANILO MALLARI DELA FUENTE, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS, SR. ARABELLA CAMMAGAY BALINGAO, SR., CHERRY M. IBARDOLAZA, CSSJB, SR., SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, and JONAS ANGELO LOPENA ABADILLA, *petitioners, versus* **COMMISSION ON ELECTIONS, FERDINAND ROMUALDEZ MARCOS, JR., THE SENATE OF THE PHILIPPINES, represented by the Senate President, THE HOUSE OF REPRESENTATIVES, represented by the Speaker of the House of Representatives,** *respondents*.

Promulgated: June 28, 2022

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CONCURRING OPINION

GAERLAN, *J.*:

I join the *ponencia*'s denial of the present petitions. I write separately to elaborate on the concept of moral turpitude, and its application to tax crimes, particularly to the present case, which involves a conviction for the crime of failure to file a tax return.

I. Recapitulation of the facts

Respondent Ferdinand R. Marcos, Jr. (Marcos, Jr.) was an elected official of the province of Ilocos Norte from November 3, 1982 to March 31, 1986.[1] When his father, then President Ferdinand E. Marcos (President Marcos), was ousted from power through the first People Power Revolution the previous February, the Marcos family, Marcos, Jr. included, fled the

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[1] *Ponencia*, p. 6.

Philippines.[2] On September 28, 1989, President Marcos died in Honolulu, Hawaii.[3] On June 27, 1990, the Bureau of Internal Revenue conducted a special investigation into the possible tax liabilities of President Marcos' estate, his family, and his close associates.[4] Acting on the findings of the special investigation, then-Bureau of Internal Revenue (BIR) Commissioner Jose U. Ong filed a complaint with the Secretary of Justice on July 25, 1991.[5] This led to Marcos, Jr. being criminally charged with violation of the National Internal Revenue Code (NIRC) for failure to pay income tax, and to file income tax returns for the years 1982, 1983, 1984, and 1985, before the Quezon City Regional Trial Court (RTC).[6] On July 27, 1995, the RTC rendered a judgment disposing thus:

> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt [of violation of] the National Internal Revenue Code of 1977, as amended, and sentences him as follows:
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> 1. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212, and Q-92-29217 for failure to file income tax returns for the years 1982, 1983, and 1984;
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> 2. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29216, Q-92-29215, and Q-92-29214 for failure to pay income taxes for the years 1982, 1983, and 1984;
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> 3. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for the year 1985; and
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> 4. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24390 for failure to pay income tax for the year 1985; and,
>
> 5. To pay the Bureau of Internal Revenue the taxes due, including such other penalties, interests, and surcharges.
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> SO ORDERED.[7]

Marcos, Jr. appealed the judgment to the Court of Appeals (CA). His appeal was docketed as CA-G.R. CR No. 18569. In a decision promulgated on October 31, 1997,[8] the CA reversed the RTC, and ruled that the BIR failed to give prior notice to Marcos, Jr. in accordance with the provisions of the NIRC; thus, he cannot be held criminally liable for failing to pay income tax.

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2 *Marcos v. Manglapus*, 258 Phil. 479, 491 (1989), and *Marcos v. Manglapus* (Resolution), 258-A Phil. 547 (1989).
3 *Marcos v. Manglapus* (Resolution), supra at 551.
4 *Ponencia*, p. 6.
5 Id.
6 Id.
7 Id. at 7.
8 Hereinafter referred to as the 1997 CA Decision.

However, the CA sustained the RTC ruling with respect to failure to file income tax returns; and ordered Marcos, Jr. to pay the deficiency income taxes since his acquittal did not extinguish his tax liability.[9] The CA disposed of the case thus:

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:
>
> 1. ACQUITTING the accused-appellant of the charges for violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-02-29216, Q-92-29215, Q-92-29214, and Q-91-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213, and Q-92-29217;
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> 2. Ordering the appellant to pay to the BIR the deficiency income taxes with interest at the legal rate until fully paid;
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> 3. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-29217 for failure to file income tax returns for the years 1982, 1983, and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.
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> SO ORDERED.[10]

Marcos, Jr. moved for an extension of time to file a petition for review before this Court; but later sought to withdrew said motion. The Court allowed the withdrawal, paving the way for the 1997 CA Decision to become final and executory on August 31, 2001, upon the Court's entry of judgment thereon.[11]

In the present petition for cancellation or denial of due course to a certificate of candidacy filed on November 2, 2021, and petition for disqualification filed on November 20, 2021, both filed with the Commission on Elections (COMELEC), herein petitioners cite the ***final and executory*** 1997 CA Decision as basis for asserting that Marcos, Jr.: 1) committed a crime involving moral turpitude, and is therefore disqualified from being a candidate for, or holding, any public office, pursuant to Section 12 of the Omnibus Election Code (OEC); and 2) committed a material misrepresentation in his certificate of candidacy (COC) for President of the Republic of the Philippines when he stated therein that "he has not been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory," when he has been meted the penalty of perpetual disqualification from public

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9 *Ponencia*, p. 7-8.
10 Id. at 8.
11 Id.

office, thereby nullifying said COC pursuant to Section 78 of the OEC. The present petitions thus, turn on a very narrowly-defined question: Does the 1997 CA Decision disqualify Ferdinand R. Marcos, Jr. from running for or holding public office?

II. The concept of moral turpitude

The two words in the term "moral turpitude" also embody the two components of the concept. The concept and definition of what is "*moral*" is in itself a stupendously deep and diverse field of study.[12] Lexicographers, for their part, state that the word came to English ultimately from the Latin *mos*, or **custom**, which in turn became *moralis*, and later *moral.*[13] *Moral*, as an adjective has been defined as "of or relating to principles or considerations of right and wrong action or good and bad character"; "expressing or teaching a conception of right behavior"; and "conforming to or proceeding from a standard of what is good or right."[14]

The term *turpitude* also comes from Latin as *turpitudo*, from the root *turpis*, which means vile, foul, or base; thus, *turpitude* is defined as "inherent baseness of vileness of principle, words, or actions."[15] Taking these two terms together, *moral turpitude* has been defined as "***an act or behavior*** that gravely violates the moral sentiment or accepted moral standards of the community";[16] as "***conduct*** that is contrary to justice, honesty, or morality"[17] and as "the morally culpable ***quality*** held to be present in some criminal offenses as distinguished from others."[18]

The use of moral turpitude as a legal standard has been held up as a textbook example of the classically problematized relationship between morals and law:

> Whether one adheres to the view that the preservation of morality is not the law's concern, or to [the view] that what is immoral is illegal and should, therefore, be punished, the problem, first of all, lies in a determination of what is immoral.
>
> Society is morally a plural society comprising a number of different mutually tolerant moralities. Bentham believed that "the good of the community cannot require that any act should be made an offense, which is not liable, in some way or the other, to be detrimental to the community."

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12 See, *e.g.*, the Introduction in Teresita J. Herbosa and Corazon P. Paredes, *Comments on Crime Involving Moral Turpitude*, 51 PHIL. L. J. 124, 124-126 (1976); Bernard Gert and Joshua Gert, "The Definition of Morality," *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), accessed at https://plato.stanford.edu/archives/fall2020/entries/morality-definition/.

13 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 1468 (1993).

14 Id.

15 Id. at 2469.

16 Id. at 1469.

17 BLACK'S LAW DICTIONARY (9TH ED.) 1101 (2009).

18 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, supra note 13, at 1469.

> Stephen, on the other hand, stressed that criminal law should not be used unless it was supported by an "overwhelming moral majority". Lord Devlin in speaking of how the collective judgment of society is to be ascertained stated:
>
> > It is that of the reasonable man. He is not to be confused with the rational man He is not expected to reason about everything and his judgment may be largely a matter of feeling.
>
> Immorality then, in its simplest sense and for the purpose of law, is that species of conduct which is likely to harm specific individuals (Lord Devlin's "reasonable man") or an indefinite number of unidentifiable individuals which is capable of sufficiently precise definition (Bentham's "community" or Stephen's "overwhelming moral majority"). Thus, criminal law becomes a mere formal embodiment of the moral values of the dominant group in society. But, then, this dominant group is not precluded from prohibiting or punishing any act which they would like to prohibit or punish regardless of the morality or immorality of said act. In the end, therefore, the mere fact that a given act is made punishable by law does not settle the question of immorality of the prohibited conduct, it does not preclude the people from passing moral judgments on the rightfulness or wrongfulness of the behavior.
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> At this point, it is submitted that the term "crime involving moral turpitude" aptly demonstrates what has so far been said. Why so? The word "crime" by itself refers to an act or omission prohibited by public law. When such is qualified by the words "moral turpitude", it can only mean an act or omission which is against both law and morals. This is, of course, an oversimplification of what the term means.[19]

In a concurring opinion, Justice Arturo D. Brion, citing American legal studies and jurisprudence, proffered the following criticisms of the use of moral turpitude as a legal standard:

> *First, the current definition of the term is broad.* It can be stretched to include most kinds of wrongs in society — a result that the Legislature could not have intended. This Court itself concluded in *IRRI v. NLRC* that moral turpitude "is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached" — once again confirming, as late as 1993 in *IRRI*, our case-by-case approach in determining the crimes involving moral turpitude.
>
> *Second, the definition also assumes the existence of a universally recognized code for socially acceptable behavior* — the "private and social duties which man owes to his fellow man, or to society in general"; moral turpitude is an act violating these duties. The problem is that the definition does not state what these duties are, or provide examples of acts which violate them. Instead, it provides terms such as "baseness," "vileness," and "depravity," which better describe moral reactions to an act than the act itself. In essence, they are "conclusory but non-descriptive." To be sure, the use of morality as a norm cannot be avoided, as the term "moral turpitude"

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[19] Herbosa & Paredes, supra note 12 at 125-126. Citations omitted.

> contains the word "moral" and its direct connotation of right and wrong. "Turpitude," on the other hand, directly means "depravity" which cannot be appreciated without considering an act's degree of being right or wrong. Thus, the law, in adopting the term "moral turpitude," necessarily adopted a concept involving notions of morality — standards that involve a good measure of subjective consideration and, in terms of certainty and fixity, are far from the usual measures used in law.
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> *Third, as a legal standard, moral turpitude fails to inform anyone of what it requires*. It has been said that the loose terminology of moral turpitude hampers uniformity since . . . [i]t is hardly to be expected that a word which baffle judges will be more easily interpreted by laymen. This led Justice Jackson to conclude in *Jordan* that "moral turpitude offered judges no clearer guideline than their own consciences, inviting them to condemn all that we personally disapprove and for no better reason than that we disapprove it." This trait, however, cannot be taken lightly, given that the consequences of committing a crime involving moral turpitude can be severe.[20]

II.A. Moral turpitude in American jurisprudence

Moral turpitude as a legal concept has been utilized primarily in terms of its definition of being a *quality inherent* in certain acts, crimes, or classes of persons. The application of moral turpitude to law is a singularly American invention,[21] which is based on a set of "***core honor norms***" prevalent among the political and intellectual classes of the United States (US) during the early years of its independence.[22] These "core honor norms" emphasized the values of integrity, honesty, and fealty to one's word for men, and the values of chastity and sexual purity for women.[23] Conversely, deception (especially in financial matters), disloyalty (*e.g.*, oath-breaking), "failure to contribute productively to society," and sexual misconduct were considered hallmarks of moral turpitude.[24] As a legal standard, moral turpitude was first applied in the state of New York to determine whether an utterance is slanderous *per se*.[25] In 1809, the New York Supreme Court decided the case of *Brooker v. Coffin*[26] (*Brooker*), which involved an action for slander filed by a woman accused of being a prostitute. The court ruled that being accused as such would amount to an imputation of moral turpitude, and therefore slanderous:

> It has been supposed that, therefore, to charge a woman with being a common prostitute, was charging her with such an offence as would give an

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20 Brion, *J.*, concurring in *Teves v. COMELEC*, infra note 111, at 738-740. Citations omitted.

21 See Julia Ann Simon-Kerr, *Moral Turpitude*, 2012 UTAH L. REV. 1001, 1008-1016 (2012); Crimes Involving Moral Turpitude, 43 HARVARD L. REV. (No. 1) 118 (1929); Brion, *J.*, concurring in *Teves v. COMELEC*, infra note 111 at 734, citing Brian C. Harms, *Redefining "Crimes of Moral Turpitude": A Proposal to Congress*, 15 GEO. IMMIGR. L.J. 259, 261 (2001).

22 Simon-Kerr, supra.

23 Simon-Kerr, id. at 1011-1014.

24 Simon-Kerr, id.

25 Simon-Kerr, id. at 1010.

26 5 Johns. 188 (N.Y. Sup. Ct. 1809). Accessed on June 21, 2022 at https://cite.case.law/johns/5/188/.

> action for the slander. The same statute which authorises the infliction of imprisonment on common prostitutes, as disorderly persons, inflicts the same punishment for a great variety of acts, the commission of which renders persons liable to be considered *disorderly*; and to sustain this action would be going the whole length of saying, that every one charged with any of the acts prohibited by that statute, would be entitled to maintain an action for defamation. Among others, to charge a person with pretending to have skill in physiognomy, palmistry, or pretending to tell fortunes, would, if this action is sustained, be actionable. Upon the fullest consideration, we are inclined to adopt this as the safest rule, and one which, as we think, is warranted by the cases: **In case the charge, if true, will subject the party charged to an indictment for a crime involving moral turpitude, or subject him to an infamous punishment, then the words will be in themselves actionable** x x x.[27] (Emphasis and underscoring supplied)

Brooker has been credited for introducing the concept of moral turpitude into law, as a standard for determining the actionably slanderous nature of utterances, as laid down in the last sentence of the aforequoted paragraph.[28] It has been noted, however, that even as *Brooker* lays down the imputation of an act involving moral turpitude as the standard for slander, it does not even define the term *moral turpitude*. This is because the term had a latent social meaning as reflected in the then-prevailing core honor norms of early American society.[29] Thus, it has been noted that 19th-century American courts have often ruled imputations of dishonesty and unchastity to be slanderous *per se*;[30] but excluded violent crimes from the ambit of moral turpitude, on the ground that the prevailing cultural norms often excused violence when grounded upon certain extenuating circumstances relating to the violation of a person's honor (*e.g.*, killing committed in the heat of passion).[31] Eventually, the moral turpitude standard came to be used as basis for excluding or disqualifying a person from acquiring or exercising certain rights. Thus, it has been used in the impeachment of witnesses;[32] disbarment cases;[33] and, with the inclusion of the standard in the provisions of the Immigration Act of 1891, to the exclusion and deportation of aliens.[34]

Problems with moral turpitude as a legal standard began to emerge as states tried to apply the original "core honor norms" which gave rise to the standard as a means to disenfranchise Black voters.[35] Likewise, difficulties emerged in the application of the moral turpitude standard to "marginal

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27 Id. at 191.

28 Simon-Kerr, supra note 21, at 1016; Rob Doersam, *Punishing Harmless Conduct: Toward a New Definition of "Moral Turpitude" in Immigration Law*, 79 OHIO ST. L. J. (No. 3) 547, 564-565 (2018).

29 Simon-Kerr, id. at 1017.

30 Simon-Kerr, id. at 1017-1019, citing 1 FRANCIS HILLIARD, THE LAW OF TORTS OR PRIVATE WRONGS 277 (2d ed. 1861).

31 Simon-Kerr, id. at 1018. Doersam, supra note 28, at 566-567.

32 Simon-Kerr, id. at 1025-1039; Herbosa & Paredes, supra note 12, at 127.

33 John S. Bradway, *Moral Turpitude as the Criterion of Offenses That Justify Disbarment*, 24 CAL. L. REV. (No. 1) 9 (1935).

34 Simon-Kerr, supra note 21, at 1039-1068.

35 Simon-Kerr, id. at 1040-1044.

cases"[36] which cannot be easily categorized as falling under the "core honor norms," particularly, in immigration cases involving exclusion and deportation of non-citizens[37] due to varied offenses such as defamation of the English monarch through accusation of bigamy,[38] assault upon a police officer,[39] possession of stolen bus transfers,[40] failure to pay liquor sales tax,[41] violation of the prohibition on the manufacture, sale, and transportation of intoxicating liquors,[42] and cockfighting.[43] In response, courts began to correlate the moral turpitude standard with existing common-law concepts[44] such as *mala in se*[45] and *scienter*.[46] To determine whether a crime involved moral turpitude, courts began looking at whether the elements of the crime involved evil or fraudulent intent,[47] or whether the crime was deemed inherently immoral at common law.[48] To this day, American courts and agencies continue to use both approaches rather inconsistently, leading a legal scholar to conclude that:

> Despite its failings, the allure of moral turpitude is undeniable. Historically, it offered the promise of an easy proxy for reputational harm, and then more simply, for a bad reputation with attendant assumptions about character. Still later, the country found itself in need of a way to identify persons who should be prohibited from entry. In 1985, the California Supreme Court proved that moral turpitude is not a relic when it elected to retain the standard, despite its flaws, as a test for impeachment evidence. It may be that the persistence of the standard—beyond a story of congressional disinterest and judicial avoidance—reflects a continuing longing for legal standards that invoke our common conscience. Codes cannot fill all of the gaps, nor do we want them to. At the same time, this Article suggests that we must be wary of the path we take to accomplish that goal.
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> Viewed in the context of its longer history, the moral turpitude standard provides a powerful counterpoint to the claim, made frequently in recent years, that judges are eager to judge based on their own moral

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36 Simon-Kerr, id. at 1039.

37 Simon-Kerr, id. at 1044, 1055-1067.

38 *United States ex rel. Mylius v. Uhl*, 203 F. 152, 153 (S.D.N.Y. 1913); 210 F. 860 (1914).

39 *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465, 466 (D. Mass. 1926), which states in part: "If one ordinarily law-abiding, in the heat of anger, strikes another, that act would not reveal such inherent baseness or depravity as to suggest the idea of moral turpitude. If, on the other hand, one deliberately assaulted an officer of the law with a dangerous weapon and with felonious intent, or for the purpose of interfering with the officer in the performance of his duty, the attendant circumstances showing an inclination toward lawlessness, the act might well be considered as one involving moral turpitude." https://law.justia.com/cases/federal/district-courts/F2/12/465/1490244/.

40 *Michel v. INS*, 206 F.3d 253, 263 (2000).

41 *Jordan v. De George*, 341 U.S. 223 (1951).

42 *United States ex rel. Iorio v. Day*, 34 F.2d 920 (1929).

43 *Ortega-Lopez v. Lynch*, 834 F.3d 1015 (2016).

44 Simon-Kerr, supra note 21, at 1023-1024; Herbosa & Paredes, supra note 12, at 127.

45 *Mala in se* is used here in its common law denotation, as acts criminalized by the common law, as opposed to *mala prohibita*, or acts criminalized by statute. Simon-Kerr, fn. at 161, id. at 1023.

46 A degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment. BLACK'S LAW DICTIONARY (9th ed.) 1463 (2009).

47 Simon-Kerr, supra note 21, at 1059-1068.

48 Simon-Kerr, id. at 1023.

> intuitions rather than the law. Paradoxically, the very standard that would provide most leeway for judges to be activist in the service of their own values has instead produced judgments so rigid in their adherence to precedent that nineteenth-century honor norms are still the best predictor of their outcomes. Courts seem more likely to reason about community moral beliefs or absolute right and wrong if they are adjudicating disputes over speeding tickets than if they are determining whether a particular crime involved moral turpitude.[49]

II.B. Moral turpitude in Philippine jurisprudence

The American conception of moral turpitude was also introduced into Philippine law. The 1938 case of *People v. Raagas*[50] applied the *Brooker* standard in an action for oral defamation. The accused claimed that he was fired from his job because he refused to contribute to the offended party's collection of one peso from their co-workers to defray the cost of hiring an orchestra to welcome the offended party's daughter, who had just returned from a beauty pageant. The offended party took offense at the claim and filed a criminal action. In sustaining the trial court's grant of accused's demurrer to evidence, we found that the collection was voluntary, and was therefore not "reproachable nor an act invoking vice, defect or moral turpitude, and cannot therefore be harmful to the honor and reputation of anybody."[51]

The moral turpitude standard also found its way into our statutes, such as Section 21 of the Code of Civil Procedure,[52] which provided:

> SECTION 21. *Disbarments.* — A member of the bar may be removed or suspended from his office as lawyer by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude or for any violation of either of the oaths aforesaid, or for the willful disobedience of any lawful order of the Supreme Court or Courts of First Instance, or for corruptly or willfully appearing as a lawyer for a party to an action or proceeding without authority so to do.

Thus, the earliest Philippine rulings on moral turpitude arose from disbarment cases. [53] Unlike American courts, the Philippine Supreme Court's determination of moral turpitude therein has applied the same norms to both men and women. The Court has pronounced crimes of sexual misconduct such as Abduction with Consent,[54] Concubinage,[55] and Bigamy[56] to involve

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49 Simon-Kerr, id. at 1068.
50 65 Phil. 630 (1938).
51 Id. at 632.
52 Act No. 190; effective on September 1901.
53 See footnotes 54 to 56, infra.
54 *In re Basa*, 41 Phil. 275 (1920).
55 *In re Isada*, 60 Phil. 915 (1934).
56 *In re Lontok*, 43 Phil. 293 (1922).

moral turpitude, regardless of the offender's sexual orientation,[57] holding that "*it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.*"[58] Likewise, early decisions also adhere to the American principle that crimes which violate the "core honor norms" involve moral turpitude. In *People v. Carillo*,[59] the Court refused to give credence to the testimony of a witness[60] partly because he had been previously convicted of robbery, which the Court held to be a crime involving moral turpitude. We also refused to grant Philippine citizenship to an alien who had been convicted of perjury, which we held to involve moral turpitude.[61]

Still consistent with the original scope of the "core honor norms," the Supreme Court has recommended the imposition of a lesser penalty for two men who have been convicted of parricide, on the ground that the men, although guilty of parricide, have not exhibited "such moral turpitude as requires life imprisonment."[62] However, a later case held that murder involves moral turpitude.[63]

II.B.1. Category-based approach

Later cases have employed a category-based approach to determining moral turpitude, which involve the categorization of certain crimes as involving moral turpitude,[64] based on prevailing moral standards usually

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57 In fact, most of the decisions involving crimes of sexual misconduct as moral turpitude involve male lawyers sought to be disbarred for said offenses. See cases in footnotes 53 to 55, supra and footnote 63, infra.

58 *In re Basa*, supra note 54 at 276. Citations omitted.

59 85 Phil. 611 (1950).

60 However, in *Cordial v. People*, 248 Phil. 247, 255-256 (1988), the Court expressed its reservations on the use of moral turpitude as a standard for impeaching witnesses: "Moral turpitude or depravity as a reason for exclusion of a witness is legally frowned upon mainly for the reason that any attempt to establish such an incapacity is met by two objections. One is that in rational experience, no class of persons can safely be asserted to be so thoroughly lacking in a sense of moral responsibility or so callous to the ordinary motives or veracity as not to tell the truth (as they see it) in a large or larger proportion of instances. The second objection is that, even if such a defect existed and were ascertainable, its operation is so uncertain and elusive that any general rule of exclusion would be as likely in a given instance to exclude the truth as to exclude falsities." Citation omitted.

61 *In Re: Guy v. Guy*, 200 Phil. 636, 648 (1982).

62 *People v. Castañeda,* 60 Phil. 604, 609 (1934); *People v. Formigones,* 87 Phil. 658, 665 (1950).

63 *In re Gutierrez*, 115 Phil. 647, 648-649 (1962).

64 The following crimes/offenses have been held to involve moral turpitude: Intriguing against honor in *Betguen v. Masangcay*, 308 Phil. 500 (1994); Rape and Concubinage in *Mondano v. Silvosa,* 97 Phil. 143 (1955); Estafa in *Medina v. Bautista*, 120 Phil. 787 (1964), *In re Jaramillo*, 101 Phil. 323 (1957), *In re Vinzon*, 126 Phil. 96 (1967), and *Moreno v. Araneta*, 496 Phil. 788 (2005); Falsification of Public Documents in *In re Avanceña*, 127 Phil. 426 (1967), *In re Pajo*, 203 Phil. 79 (1983), *In re Pactolin*, 686 Phil. 351 (2012), and *Pagaduan v. Civil Service Commission*, 747 Phil. 590 (2014), because it is a "violation of the public faith and the destruction of truth as therein solemnly proclaimed"; use of an unsealed meter stick in *Ao Lin v. Republic*, 119 Phil. 284 (1964), because use of measuring sticks without government seals constitutes fraud; Concubinage in *Laguitan v. Tinio*, 259 Phil. 322 (1989); Bigamy in *Villasanta v. Peralta*, 101 Phil. 313 (1957); Smuggling in *In re Rovero*, 92 Phil. 128 (1952); Bribery and Direct bribery under Art. 210 of the Revised Penal Code, in *Re: Joselito C. Barrozo*, 764 Phil. 310 (2015), *Magno v. COMELEC*, 439 Phil. 339 (2002), and *In re De los Angeles*, 106 Phil. 1 (1959); Swindling in *Bron v. Delis*, 178 Phil. 347 (1979); Attempted Rape in *People v. Torrefranca*,

traceable to the core honor norms, primarily honesty, integrity, truthfulness, and sexual virtue. In *De Jesus-Paras v. Vailoces*,[65] we disbarred a lawyer who was convicted of falsification of public documents for forging a will. We explained that "*embezzlement, forgery, robbery, [and] swindling are crimes, which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude.*"[66] The Court has gone so far as to generally state that "*[d]eceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals.*"[67]

With respect to violent crimes, early decisions adopt the American rule, but later ones generally hold that violent crimes involve moral turpitude.[68] In an early obiter dictum which sought to reconcile two provisions of the old Election Code on the enumeration of persons not qualified to vote, the Court held:

> But, it would be asked, why should paragraph (b) discriminate against crimes against property? And why should it confine itself to crimes punishable with less than one year imprisonment?
>
> The answer is that major crimes always involve a high degree of moral turpitude. When it comes to lesser crimes, or rather crimes punishable with lighter penalty, the concept is reversed. Petty thefts and petty deceits and embezzlement always involve dishonesty and are reprehensible, while assaults and battery, calumnies, violations of municipal ordinance and traffic regulations, are, more likely than not, the products of violent passion or emotion, negligence or ignorance of law.[69]

The Court therein does not explain what it meant by "major" or "lesser" crimes, but it seems to suggest a correlation between harshness of penalty and moral turpitude. The Court was more categorical in *People v. Jamero*,[70] where

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235 Phil. 143 (1987); Forgery in *Campilan v. Campilan, Jr.*, 431 Phil. 223 (2002); and Sale of Dangerous Drugs in *Office of the Court Administrator v. Librado*, 329 Phil. 432 (1996); The following offenses have been held to ***not*** involve moral turpitude: slight physical injuries in *Ochate v. Deling*, 105 Phil. 384 (1959); and Intoxication as an administrative offense under the rules of the former Integrated National Police in *Jaculina v. National Police Commission*, 277 Phil. 559 (1991).

65 111 Phil. 569 (1961).

66 Id. at 571.

67 *Yamon-Leach v. Astorga*, A.C. No. 5987, August 28, 2019; *Suarez v. Maravilla-Ona*, 796 Phil. 27 (2016); *San Juan v. Venida*, A.C. No. 11317, August 23, 2016. In accordance with this general rule, violation of Batas Pambansa Blg. 22 has been held to involve moral turpitude. *People v. Tuanda* (Resolution), 260 Phil. 572 (1990); *Barrios v. Martinez*, 485 Phil. 1 (2004); *Vitor v. Zafra*, 749 Phil. 74 (2014); *Re: Imelda B. Fortus*, 500 Phil. 23 (2005); *Villaber v. COMELEC*, 420 Phil. 930 (2001). This general rule is congruent with the principle laid down in the landmark case of *Jordan v. DeGeorge*, supra note 41, at 227-229, that "a crime in which fraud is an ingredient involves moral turpitude. x x x. [F]raud has ordinarily been the test to determine whether crimes not of the gravest character involve moral turpitude. In every deportation case where fraud has been proved, federal courts have held that the crime in issue involved moral turpitude. x x x [F]raud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude."

68 See supra notes 62 and 63.

69 *Pendon v. Diasnes*, 91 Phil. 848, 853 (1952), involving *quo warranto* against a municipal mayor who had been previously convicted of Estafa.

70 133 Phil. 127 (1968).

appellants questioned the trial court's discharge of one of their co-accused as a state witness on the ground of a previous conviction for malicious mischief. In sustaining the trial court, we held:

> Moral turpitude has been described as an act of baseness, vileness and depravity in the private and social duty which a man owes to his fellowmen or to society in general, done out of a spirit of cruelty, hostility or revenge, but there is also authority to the effect that an act is not so done when it is prompted by the sudden resentment of an injury calculated in no slight degree to awaken passion. In the light of these authorities, We have searched the record of the case in an effort to ascertain the gravity of the nature of the crime of malicious mischief allegedly committed by Retirado, but We found the evidence wanting in this respect. What appears to have been established by the defense were the facts that Cresencio Retirado was convicted of the crime of malicious mischief by the Justice of the Peace Court of Sagay, Negros Occidental, and that the said accused was therein sentenced to five (5) days imprisonment. In the absence, therefore, of any evidence to show the gravity and the nature of the malicious mischief committed, We are constrained to declare that We are not in a position to say whether or not the previous conviction referred to, assuming Cresencio Retirado and Inocencio Retirado are one and the same person, proves that Retirado had displayed the baseness, the vileness and the depravity which constitute moral turpitude. And considering that under paragraph 3 of Article 329 of the Revised Penal Code, any deliberate act (not constituting arson or other crimes involving destruction) causing damage to the property of another, may constitute the crime of malicious mischief, We should not make haste in declaring that such crime involves moral turpitude without determining, at least, the value of the property destroyed and/or the circumstances under which the act of destroying was committed. Moreover, it appears that after the lower court issued the order of discharge complained of, the defense ventilated before this Court the issue as to whether or not the crime of malicious mischief involves moral turpitude by questioning the legality of the said order in a petition for certiorari and prohibition. The fact that this Court did not give due course to their petition (Jamero, et al. vs. Judge Enriquez, et al., L-15552) should have been sufficient warning that the theory advanced by them is not meritorious.[71]

Years later, *Can v. Galing*[72] deviated from the American rule and held that attempts on another person's life involve moral turpitude:

> In *In re Gutierrez*, the crime of murder was considered a crime involving moral turpitude. Certainly, attempted murder, for which the accused Daria was found guilty, belongs to the same classification. The premeditated attempt to take a human life is decidedly a base, vile, and depraved act contrary to moral standards of right and wrong. Coupled with the other crimes for which the accused Daria had been previously convicted, the latter's disqualification to be discharged from the information to become a state witness should have been obvious.[73]

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71 Id. at 169-170. Citations omitted.
72 239 Phil. 629 (1987).
73 Id. at 634. Citation omitted.

A line of cases stemming from the late 1980s denies separation pay as a social justice measure to workers who were validly dismissed for "offenses involving moral turpitude." In *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, [74] Philippine Long Distance Telephone, Co. questioned the award of separation pay as financial assistance to an employee it had validly dismissed for demanding bribes from customers to facilitate telephone installation. The majority agreed, and essentially held that it would be unjust to award separation pay to employees who have violated the "core honor norms":

> But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.
>
> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. **Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.**[75] (Emphasis and underscoring supplied)

Subsequent cases have invoked this moral turpitude rule to deny separation pay to employees dismissed for the following causes: dishonesty;[76] embezzlement and serious misconduct;[77] theft or pilfering of company property;[78] tampering of documents to cover up unliquidated cash advances;[79]

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74 247 Phil. 641 (1988).

75 Id. at 649.

76 *Philippine National Construction Corp. v. National Labor Relations Commission*, 252 Phil. 211, 214 (1989).

77 *Osias Academy v. Department of Labor and Employment*, 254 Phil. 468 (1989).

78 *Philippine Airlines, Inc. v. National Labor Relations Commission*, 347 Phil. 215 (1997); *United South Dockhandlers, Inc. v. National Labor Relations Commission*, 335 Phil. 76 (1997); *Sampaguita Garments Corp. v. National Labor Relations Commission*, 303 Phil. 276 (1994); *Del Monte Phil., Inc. v. National Labor Relations Commission*, 266 Phil. 405 (1990); *Pacaña v. National Labor Relations Commission*, 254 Phil. 473 (1989).

79 *Baguio Country Club Corp. v. National Labor Relations Commission*, 288 Phil. 560 (1992).

misappropriation of company funds;[80] and having an affair with a married colleague.[81]

Interestingly, early decisions hold that libel "does not necessarily involve moral turpitude."[82] As will be demonstrated below, equivocal pronouncements like this created "marginal cases"[83] that necessitated the development of new approaches to determining moral turpitude.

II.B.2. Mala in se approach

At least one case employs the *mala in se-mala prohibita* distinction, and limits crimes involving moral turpitude to *mala in se* offenses. In *Court Administrator v. San Andres*[84] (*San Andres*), illegal recruitment was held to not involve moral turpitude:

> Anent his conviction for illegal recruitment, We find no cogent reason to modify or disturb the submission of the investigating judge that notwithstanding respondents' conviction, it should not be held against him because the crime committed is not one involving moral turpitude. Moral Turpitude "implies something immoral in itself regardless of the fact that it is punishable by law or not. It must not merely be mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in the fact of their being positively prohibited." (Zari vs. Flores, Adm. Matter No. ([2170-MC] P-1356, 94 SCRA 323). The undisputed fact that herein respondent was a volunteer employee of the recruitment agency, receiving no compensation, and had only hoped that he would be deployed for overseas employment readily shows that he himself was a victim of the unscrupulous acts of others who had capitalized on his service, not aware that he would be prejudiced at the end. From the documents on file in this administrative case and considering the report submitted by the Judge tasked to investigate, We are inclined to resolve this case in favor of the respondent.[85]

However, it may be argued that illegal recruitment, although *malum prohibitum*, essentially involves deceitful recruitment practices,[86] and therefore involves fraudulent or deceitful conduct, moreso considering that "a person who commits acts constituting illegal recruitment may be held liable not only for the crime of illegal recruitment but also for estafa,"[87] which indisputably involves moral turpitude. Also, the resort to a *mala in se*

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80 *San Miguel Corp. v. National Labor Relations Commission*, 325 Phil. 940 (1996).
81 *Santos, Jr. v. National Labor Relations Commission*, 350 Phil. 560 (1998). The offender was also married.
82 *Burguete v. Mayor*, 94 Phil. 930, 932 (1954); *Lacson v. Roque*, 92 Phil. 456 (1953).
83 Simon-Kerr, supra note 36.
84 (Resolution), 274 Phil. 990 (1991).
85 Id. at 997.
86 Republic Act No. 8042, Sec. 6; *Toston y Hular v. People*, G.R. No. 232049, March 3, 2021.
87 *Toston y Hular v. People*, supra.

approach was not necessary, in view of the finding that the respondent was not guilty of any fraud, but was actually a victim of fraud himself.

II.B.3. Fact- and element-based approaches

As earlier discussed, the original category-based approach easily becomes unworkable when applied to cases which cannot be easily categorized as falling under the "core honor norms." Likewise, the aforecited *San Andres* case highlights the failure of the *mala in se* approach to take into account possible nuances of moral turpitude in *malum prohibitum* offenses. Thus, the Supreme Court has adopted fact-based[88] approaches to determine moral turpitude, where the facts of the case are applied to a certain legal, moral, or social standard. In other cases, the Court examined the elements of an offense to see if any of them involves a violation of the core honor norms.

These approaches were first employed in immigration proceedings, where the Court primarily considered the social effects of the acts claimed to be morally turpitudinous. In *Ng Teng Lin v. Republic*,[89] we granted citizenship to the applicant despite his admission that he had been previously cited for speeding, for which he was sentenced to pay a fine. We held the offense to be a mere minor transgression, which does not involve moral turpitude, considering the glowing testimonies of the witnesses as to the applicant's character. However, in *Tak Ng v. Republic*,[90] we denied citizenship to an alien who had been convicted of profiteering because it is

> an offense which is severely and heavily penalized with imprisonment of not more than 10 years, or by a fine of not more than ₱10,000.00, or by both, involves moral turpitude, inasmuch as it affects the price of prime commodities and goes to the life of the citizens, especially those who are poor and with hardly the means to sustain themselves.[91]

The Court has also used the fact-based approach to determine moral turpitude in disbarment, judicial discipline, and bar matters. In *Velez v. Locsin*,[92] a lawyer was accused of using the name of a religious organization, the Barangay Sang Virgen, to avoid customs duties and taxes on an imported car. During the proceedings, it was found that the car was actually consigned to the Barangay Sang Virgen, who then allowed the lawyer to use the car

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88 In the United States, this approach is referred to as a "modified categorical inquiry," whereby the court examines the record of conviction to determine if the circumstances of the offense involve moral turpitude. Pooja R. Dadhania, *The Categorical Approach for Crimes Involving Moral Turpitude After Silva-Trevino*, 111 COLUMBIA L. REV. 313, 329-332, 336-340 (2011); Patrick J. Campbell, *Crimes Involving Moral Turpitude: In Search of a Moral Approach to Immoral Crimes*, 88 ST. JOHN'S L. REV. (No. 1) 147, 165, 171-173. (2014); Sara Salem, *Should They Stay or Should They Go: Rethinking the Use of Crimes Involving Moral Turpitude in Immigration Law*, 70 FLA. L. REV. 225, 237-238 (2018).

89 103 Phil. 484 (1958).

90 106 Phil. 727 (1959).

91 Id. at 730-731. Citations omitted.

92 (Resolution) 154 Phil. 133 (1974).

because he was the chief legal counsel of the organization. When the non-payment of the duties and taxes on the car was discovered, the Barangay Sang Virgen and the lawyer's other institutional client paid the same, so that the car may be released from impounding. In absolving the lawyer, we held:

> Under these facts one is hard put to impute moral turpitude on respondent's part. Pursuant to Republic Act No. 1916, the car was exempt from payment of all taxes and duties. That it was respondent who has been using the car, is of no moment in the face of the certification of the religious organization to which it was donated, that respondent was its Chief Legal Counsel and that it had assigned the car to him for his use in the performance of his duties as such legal officer. In any event, thru the insistence of the military authorities, and to prevent further 103s and damage to the car by its continued impounding, the Barangay Sang Virgen and the Roman Catholic Bishop of Bacolod were constrained to pay the taxes due thereon under Presidential Decree No. 52 so that the car could be released.[93]

In *Zari v. Flores*[94] (*Zari*), a judge asked the Supreme Court to dismiss his clerk of court, in part because the latter had been convicted of libel, which the judge claims to be morally turpitudinous. We refused to categorically rule on the moral turpitude of libel;[95] rather, we used the fact of conviction in conjunction with other evidence,[96] to conclude that the clerk was unfit for judicial office. Despite *Zari's* lack of a categorical ruling on the moral turpitude of libel, *Ty-Delgado v. House of Representatives Electoral Tribunal*[97] (*Ty-Delgado*), which is a disqualification case against a candidate for the House of Representatives, cites it to that effect. Essentially, the citation was unnecessary in view of the Court's analysis, which used the elements of the crime to determine that libel involves malice or bad faith, and is therefore a violation of a core honor norm. Since the candidate sought to be disqualified had been found guilty of publishing four articles which are libelous *per se*, he was disqualified for conviction of a crime involving moral turpitude.

Garcia v. De Vera[98] involved a petition to disqualify a lawyer from being elected governor of the Integrated Bar of the Philippines for Eastern Mindanao, in part because he had been found guilty of indirect contempt for publishing statements calculated to influence the Supreme Court's ruling in a particular case. We held that the lawyer's statements, while contemptuous, did not involve moral turpitude because

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93 Id. at 140.

94 183 Phil. 27 (1979).

95 We admitted that the fact of the clerk's conviction "alone is not sufficient to warrant disciplinary action," and that "conviction for libel does not automatically justify removal of a public officer." Id. at 38.

96 The clerk had written a defamatory letter to another judge, was shown to have exercised undue influence in the judge's disposition of cases, and lied about his criminal record in an affidavit. Id. at 33-34.

97 779 Phil. 268 (2016).

98 463 Phil. 385 (2003).

> it cannot be said that the act of expressing one's opinion on a public interest issue can be considered as an act of baseness, vileness or depravity. Respondent De Vera did not bring suffering nor cause undue injury or harm to the public when he voiced his views on the Plunder Law. Consequently, there is no basis for petitioner to invoke the administrative case as evidence of respondent De Vera's alleged immorality.[99]

Veering away from generalizations about violent crime, the Court has also used a fact-based approach in determining the moral turpitude of homicide and its stages of execution. In *International Rice Research Institute v. National Labor Relations Commission*[100] (*IRRI*), the International Rice Research Institute (IRRI) dismissed a laborer after he was convicted of homicide, for an incident which occurred off-duty. The laborer contested his dismissal all the way to this Court, where IRRI argued that "the crime of homicide committed by [the employee] involves moral turpitude as the killing of a man is conclusively an act against justice and is immoral in itself[,] not merely prohibited by law."[101] The Supreme Court rejected IRRI's argument, and took the factual background of the laborer's homicide conviction into account:

> IRRI failed to comprehend the significance of the facts in their totality. The facts on record show that Micosa was then urinating and had his back turned when the victim drove his fist unto Micosa's face; that the victim then forcibly rubbed Micosa's face into the filthy urinal; that Micosa pleaded to the victim to stop the attack but was ignored and that it was while Micosa was in that position that he drew a fan knife from the left pocket of his shirt and desperately swung it at the victim who released his hold on Micosa only after the latter had stabbed him several times. These facts show that Micosa's intention was not to slay the victim but only to defend his person. The appreciation in his favor of the mitigating circumstances of self-defense and voluntary surrender, plus the total absence of any aggravating circumstance demonstrate that Micosa's character and intentions were not inherently vile, immoral or unjust.[102]

Crucially, the Court categorically rejected intent-based and *mala in se* approaches, and held that moral turpitude should be defined essentially on the basis of factual circumstances:

> This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime. **Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute**, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances. While x x x generally but not always, crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, **it cannot always be ascertained whether moral turpitude does or**

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99 Id. at 415. Citation omitted.
100 293 Phil. 823 (1993).
101 Id. at. 834.
102 Id.

> **does not exist by classifying a crime as *malum in se* or as *malum prohibitum*, since there are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only.** It follows therefore, that moral turpitude is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached. [103] (Emphasis and underscoring supplied; citations omitted)

Expressly relying on *IRRI*, Court followed the same fact-based approach in *Soriano v. Dizon*[104] (*Soriano*), where a lawyer's conviction for frustrated homicide was invoked as grounds for his disbarment. The Court found that the factual background of the lawyer's crime evinced moral turpitude. Comparing the circumstances of the lawyer's attack with that of the laborer in *IRRI*, the Court concluded that:

> The present case is totally different. As the IBP correctly found, the circumstances clearly evince the moral turpitude of respondent and his unworthiness to practice law.
>
> Atty. Dizon was definitely the aggressor, as he pursued and shot complainant when the latter least expected it. The act of aggression shown by respondent will not be mitigated by the fact that he was hit once and his arm twisted by complainant. Under the circumstances, those were reasonable actions clearly intended to fend off the lawyer's assault.
>
> We also consider the trial court's finding of treachery as a further indication of the skewed morals of respondent. He shot the victim when the latter was not in a position to defend himself. In fact, under the impression that the assault was already over, the unarmed complainant was merely returning the eyeglasses of Atty. Dizon when the latter unexpectedly shot him. To make matters worse, respondent wrapped the handle of his gun with a handkerchief so as not to leave fingerprints. In so doing, he betrayed his sly intention to escape punishment for his crime.
>
> The totality of the facts unmistakably bears the earmarks of moral turpitude. By his conduct, respondent revealed his extreme arrogance and feeling of self-importance. As it were, he acted like a god on the road, who deserved to be venerated and never to be slighted. Clearly, his inordinate reaction to a simple traffic incident reflected poorly on his fitness to be a member of the legal profession. His overreaction also evinced vindictiveness, which was definitely an undesirable trait in any individual, more so in a lawyer. In the tenacity with which he pursued complainant, we see not the persistence of a person who has been grievously wronged, but the obstinacy of one trying to assert a false sense of superiority and to exact revenge.[105]

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[103] Id. at 834-835.
[104] 515 Phil. 635 (2006).
[105] Id. at 643-644.

In *Garcia v. Sesbreño*,[106] a conviction of homicide was again invoked to disbar a lawyer, who replied that *Soriano* should not apply to his case. Again, the Court reviewed the factual background of the homicide and found it morally turpitudinous:

> The Decision showed that the victim Luciano Amparado (Amparado) and his companion Christopher Yapchangco (Yapchangco) were walking and just passed by Sesbreño's house when the latter, without any provocation from the former, went out of his house, aimed his rifle, and started firing at them. According to Yapchangco, they were about five meters, more or less, from the gate of Sesbreño when they heard the screeching sound of the gate and when they turned around, they saw Sesbreño aiming his rifle at them. Yapchangco and Amparado ran away but Amparado was hit. An eyewitness, Rizaldy Rabanes (Rabanes), recalled that he heard shots and opened the window of his house. He saw Yapchangco and Amparado running away while Sesbreño was firing his firearm rapidly, hitting Rabanes' house in the process. Another witness, Edwin Parune, saw Amparado fall down after being shot, then saw Sesbreño in the middle of the street, carrying a long firearm, and walking back towards the gate of his house. The IBP-CBD correctly stated that Amparado and Yapchangco were just at the wrong place and time. They did not do anything that justified the indiscriminate firing done by Sesbreño that eventually led to the death of Amparado.[107]

In assessing the moral turpitude of violations of special penal laws, some decisions use, or at least invoke, two approaches in conjunction with each other. The test begins with a search for a violation of the core honor norms in the elements of the offense, and is complemented by an examination of the factual background of the conviction, when deemed necessary by the Court.

In *Dela Torre v. COMELEC*,[108] a mayoralty candidate was sought to be disqualified on the basis of his previous conviction for fencing under Presidential Decree (P.D.) No. 1612. The Court dispensed with the review of the factual background of the conviction, on the ground that the candidate "does not assail his conviction."[109] Thus, the Court used the element-based approach in *Ty-Delgado*; and held that fencing involves moral turpitude:

> Moral turpitude is deducible from the third element [of fencing, *i.e.*, the accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft]. Actual knowledge by the "fence" of the fact that property received is stolen displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which, by their very nature, are crimes of moral turpitude. And although the participation of each felon in the unlawful taking differs in point in time and in degree, both the "fence" and the actual perpetrator/s of the robbery or

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106 752 Phil. 463 (2015).
107 Id. at 470-471.
108 (Resolution) 327 Phil. 1144 (1996).
109 Id. at 1152.

> theft invaded one's peaceful dominion for gain — thus deliberately reneging in the process "*private duties*" they owe their "*fellowmen*" or "*society*" in a manner "*contrary to x x x accepted and customary rule of right and duty x x x, justice, honesty x x x or good morals.*" The duty not to appropriate, or to return, anything acquired either by mistake or with malice is so basic it finds expression [in Articles 19 to 22 and 2154] of the Civil Code on "*Human Relations*" and "*Solutio Indebiti*[.]"
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> x x x x
>
> The same underlying reason holds even if the "fence" did not have actual knowledge, but merely "should have known" the origin of the property received. In this regard, the Court held:
>
> > "When knowledge of the existence of a particular fact is an element of the offense, such knowledge is established if a person is aware of the high probability of its existence unless he actually believes that it does not exist. On the other hand, the words 'should know' denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in the performance of his duty to another or would govern his conduct upon assumption that such fact exists."
>
> Verily, circumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No 1612 that "mere possession of any goods, . . ., object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing" — a presumption that is, according to the Court," reasonable for no other natural or logical inference can arise from the established fact of . . . possession of the proceeds of the crime of robbery or theft." All told, the COMELEC did not err in disqualifying the petitioner on the ground that the offense of fencing of which he had been previously convicted by final judgment was one involving moral turpitude.[110]

Teves v. Commission on Elections[111] was a disqualification case against Teves, a candidate for the House of Representatives who had been previously convicted of possession of prohibited financial interest under Section 3(h) of Republic Act No. 3019, for having a financial interest in a cockpit while he was mayor. The Court examined the factual background of Teves' conviction, and found that: 1) he did not use his position as mayor to gain said interest; 2) the transfer of said interest to his wife was not made to conceal such; 3) mere possession of financial interest in a cockpit was not prohibited under previous laws; 4) the maximum sentence was not imposed on him because he was

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[110] Id. at 1153-1155. Citations omitted.
[111] 604 Phil. 717 (2009).

"[p]resumably x x x not yet very much aware of the prohibition,"[112] having been charged therewith shortly after the prohibition took effect; and 5) the immorality of cockfighting *per se*, and its use as a vehicle for gambling, is debatable. In view of these findings, the Court ruled that Teves' conviction did not involve moral turpitude.[113]

In his concurring opinion, Justice Brion endorsed the *ponencia*'s fact-based determination of moral turpitude. He also applied the category-based (referred to in the opinion as the objective approach) and the element-based approaches to Teves' conviction. First, he noted that the moral gravamen of the offense is the abetting of gambling, and such act is not "*per se* immoral" "by contemporary community standards,"[114] considering that possession of pecuniary interest in a cockpit by a public officer was not penalized by previous laws. He also analyzed the elements of the offense to determine if any of these involve a violation of the core honor norms:

> The essential elements of the offense of possession of prohibited interest (Section 3 (h) of the Anti-Graft Law) for which the petitioner was convicted are:
>
> 1. The accused is a public officer;
>
> 2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
>
> 3. He is prohibited from having such interest by the Constitution or any law.
>
> From the perspective of moral turpitude, the third element of the crime is the critical element. An analysis of this element, significantly using the objective norms of the first approach, shows that the holding of interest that the law covers is not a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals; it is illegal solely because of the prohibition that exists in law or in the Constitution. Thus, no depravity immediately leaps up or suggests itself based solely on the elements of the crime committed.[115]

Significant in Justice Brion's approach is the use of "contemporary community standards" as an alternative to the core honor norms, which is essentially rooted in 18th-century American culture; although his concurrence does not offer much clarification on what these "contemporary community standards" should be. At any rate, based on the foregoing cases, Philippine jurisprudence does not seem to reject the original notion that moral virtue includes, at the very least, the values of honesty, integrity, truthfulness, and sexual virtue; and crimes that violate these norms involve moral turpitude. The fact-based approach that has been developed for homicide and bodily

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[112] Id. at 732.
[113] Supra note 111
[114] Id. at 750.
[115] Id. at 751.

injury also hews closely to the original idea that violence, although criminal, does not involve moral turpitude when "justified" by the circumstances,[116] despite subsequent cases that deem the taking or injuring of human life as categorically immoral. Crucially, unlike early American jurisprudence, Philippine jurisprudence has demanded these virtues from all persons regardless of gender or sexual orientation.

II.C. Moral turpitude in tax offenses

In light of the foregoing discussion, we now proceed to the determination of moral turpitude in tax offenses, particularly, the offense for which Marcos, Jr. was convicted: failure to file a tax return.

"*The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.*'"[117] To this end, Chapter II, Title X of the NIRC defines and penalizes certain acts which are detrimental to the tax collection effort of the government. "*Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing* ***evasions or neglect of duty*** *in respect thereof.*"[118] Tax evasion has been defined as a scheme to reduce or avoid taxes outside of lawful means.[119] Tax evasion "*connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes.*"[120] Thus, tax crimes, as defined and penalized in the NIRC, offend not only the legal norms which underpin the power of taxation, but also the core honor norms of honesty, truthfulness, and contribution to society. In determining whether these offenses involve moral turpitude, courts must therefore, inquire into the circumstances of the offense or offenses involved in every case. If the circumstances of the case show that the offense was committed through mere omission or neglect, then the same cannot be considered as involving moral turpitude; but if the circumstances evince fraud or willful intent to avoid payment of taxes, moral turpitude exists.

The determination of moral turpitude in tax offenses in the US essentially centers on the existence of fraud. The doctrinal divergence lies in the issue of the proper approach: some cases use a category-based approach and hold that tax evasion is inherently fraudulent;[121] while some cases hold that it is not, and a fact-based approach must be used to determine whether the

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[116] Simon-Kerr, supra note 21 at 1029; supra note 31.

[117] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, 638 Phil. 334, 351 (2010).

[118] *Philippine Refining Co. v. Court of Appeals*, 326 Phil. 680, 691 (1996). Emphasis, underscoring, and italics supplied.

[119] *Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch*, G.R. No. 227121, December 9, 2020.

[120] Id.

[121] *Kawashima v. Holder*, 565 U.S. 478 (2012); *Tseung Chu v. Cornell*, 247 F.2d 929 (1957); *Maryland St. Bar Ass'n v. Agnew*, 318 A. 2d 811, 271 Md. 543 (1974).

circumstances of the offense involve fraud.[122] For example, the CA of the District of Columbia found no moral turpitude in a lawyer's conviction for tax evasion because

> [i]t is not obvious that he ever affirmatively lied in dealing with the IRS; he merely gave them the information they requested, and nothing more. He had organized his finances in such a way that his available resources were difficult to trace, but honestly reported his income in yearly tax returns. Because we do not know whether the jury predicated his conviction of tax evasion on any affirmative act more duplicitous than "placing his funds beyond the service of process," and because we cannot establish that he actually took steps to conceal information or made false statements, we cannot say that he practiced deception.[123]

Cases on failure to file a return have generally followed the same trend.[124] Notably, the offense involved in most of the US cases is ***willful*** failure to file a return, as defined and penalized under the US Internal Revenue Code.[125] Given the wording of the statute, courts have considered the element of willfulness as an indicator of fraudulent intent.[126] However, in *Attorney Grievance Commission of Maryland v. Walman*, the Maryland CA expressly rejected the category-based approach in favor of the fact-based approach:

> The question whether failure to file tax returns is per se a crime involving moral turpitude has been considered in a vast number of disciplinary cases and the courts have divided on the issue. Those courts which have held that every conviction of failure to file is per se an offense involving moral turpitude have done so by baldly arriving at that conclusion or by simply refusing to distinguish that crime from the § 7201 offense of making a false and fraudulent return, i.e., willful tax evasion, see, e.g., *In re MacLeod*, 479 S.W.2d 443, 445 (Mo.), cert. denied, 409 U.S. 979 (1972); *In re Kline, 156 Mont.* 177, 477 P.2d 881, 882 (1970); *State Bd. of Law Examiners v. Holland*, 494 P.2d 196, 197 (Wyo. 1972), a distinction which, as we have suggested, even the federal courts make.
>
> Most courts, however, hold that failure to file is not a crime involving moral turpitude per se, and that the issue turns on the facts of the particular case. They rest the proposition that not every such conviction involves moral turpitude either on the distinction between the two federal crimes or on the absence of fraudulent intent and further misconduct, or both, See, e.g., *In re Fahey*, 8 Cal.3d 842, 505 P.2d 1369, 1374-75, 106 Cal. Rptr. 313 (1973);

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122 *In the Matter of Shorter*, 570 A. 2d 760 (1990). Justice Richard Posner points out that the 2015 United States Department of State Foreign Affairs Manual explicitly classifies tax evasion as involving moral turpitude if willful, and not involving moral turpitude if without intent to defraud. Posner, *J.*, concurring in *Arias v. Lynch*, 834 F. 3d 823, 832-833 (2016).

123 Id. at 767.

124 See *Attorney Grievance Commission of Maryland v. Walman*, 374 A. 2d 354 (1977); *In re Hallinan*, 272 P. 2d 768 (1954); *Carty v. Ashcroft*, 395 F. 3d 1081 (2005), fn. 3., stating that "intent to defraud is implicit in willfully failing to file a tax return with the intent to evade taxes"; and the dissent arguing that fraud is not presumed, and must be proven in order for tax evasion to be considered morally turpitudinous.

125 Id.

126 Id.

Kentucky State Bar Association v. McAfee, 301 S.W.2d 899 (Ky. 1957); *Matter of Cochrane*, 549 P.2d 328, 329 (Nev. 1976); *In re Ford's Case*, 102 N.H. 24, 149 A.2d 863, 864 (1959); *Cincinnati Bar Assn. v. Leroux*, 16 Ohio St.2d 10, 242 N.E.2d 347, 348 (1968); *In re Walker*, 240 Ore. 65, 399 P.2d 1015, 1016 (1965); *In re Weisensee*, 224 N.W.2d 830, 831 (S.D. 1975); *In re McShane*, 122 Vt. 442, 175 A.2d 508 (1961); *Committee of Legal Ethics v. Scherr*, 143 S.E.2d at 145; *State v. Roggensack*, 19 Wis.2d 8, 119 N.W.2d 412, 416 (1963). See also *In re O'Hallaren*, 64 Ill.2d 426, 356 N.E.2d 520, 523, 1 Ill. Dec. 332 (1976).

There is a third line of cases in which the courts, though presented with the issue of whether failure to file was a crime involving moral turpitude, have found it unnecessary to decide the question, but nevertheless have proceeded to impose disciplinary sanctions. See, e.g., *People v. Fenton*, 165 Colo. 131, 437 P.2d 350, 351 (1968); *In re Schub*, 54 Ill.2d 277, 296 N.E.2d 738, 740 (1973), *Iowa State Bar Association v. Kraschel*, 148 N.W.2d at 628; *In re Bunker*, 294 Minn. 47, 199 N.W.2d 628, 631-32 (1972); *In re De Luca*, 112 R.I. 909, 308 A.2d 826, 827 (1973); In re Calhoun, 127 Vt. 220, 245 A.2d 560 (1968).

We think the better view is represented by the cases holding that not every conviction of failure to file is a crime involving moral turpitude, but that the issue depends on the particular facts of the individual case. As we have stressed, the federal cases have eliminated fraud and dishonesty, the very conduct by which we identify moral turpitude, as elements of the § 7203 crime. Consequently, such a conviction does not on its face establish moral turpitude. In the final analysis, then, whether failure to file is a crime involving moral turpitude hinges on the facts present in the individual case at hand. We turn then to the question whether the circumstances prevailing here reflect such conduct.

Here, as we have intimated, no evidence has been presented to show that respondent's failure to file the returns was accompanied by a fraudulent or dishonest intent. Nor does the record reflect an intent to avoid the ultimate payment of taxes. There is no suggestion, for example, that respondent falsified records, made deceptive statements to Internal Revenue agents, testified untruthfully, committed any other act of dishonesty, or was guilty of further misconduct. No evidence has ever been uncovered by either the I.R.S. or petitioner to refute respondent's explanation for his conduct: that it resulted from his inability to pay. In short, there is no further showing, beyond the bare fact of conviction for failure to file his returns, to indicate that respondent's conduct was infected with moral turpitude, as we have defined that term.

Nothing we have said is intended in the slightest degree to diminish the gravity of the crime involved here. It is, as we shall demonstrate, such conduct as may result in the imposition of any one of the sanctions prescribed by Rule BV11 a 1, that is, reprimand, suspension, or disbarment. The consequence of our holding is simply that disbarment does not automatically follow from every conviction for failure to file a federal tax return.[127]

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[127] *Attorney Grievance Commission of Maryland v. Walman*, id. at 461-463. Emphasis and underscoring supplied. The dissent, also using a fact-based approach, holds that the record sufficiently proved the moral turpitude of the lawyer's offense.

Similarly, the Supreme Court of California reversed the suspension of a lawyer despite his conviction for willful failure to file an income tax return because

> x x x [i]t is established that not only failure to file a tax return but also failure to pay a tax does not necessarily involve moral turpitude. (*In re Higbie*, supra, 6 Cal.3d 562, 571.) There must be more than mere repetition of the same acts to differentiate the offending attorney who is guilty of moral turpitude from the one who is not. No other basis is shown in the instant case for concluding that respondent's offense involved moral turpitude. The record shows no intent on his part to avoid ultimately filing his return or paying his taxes with penalties and interest. He is not shown to have falsified records, made deceptive statements to revenue agents, testified untruthfully, or committed any other act of dishonesty. There is no showing that his income tax delinquencies or his accompanying state of mind impaired his performance of professional duties to his clients in an honest and faithful manner.[128]

II.C.1. Moral turpitude of failure to file tax return under the NIRC and its amendments

Following the foregoing precedents, we employ both the element- and fact-based approaches to the case at bar. The final and executory 1997 CA Decision pronounced Marcos, Jr. "*guilty beyond reasonable doubt of violation of Section 45 of the* [1977] *NIRC for failure to file income tax returns for the taxable years 1982 to 1985*." Section 45 of the 1977 NIRC required the filing of an income tax return and provided for the parameters thereof. Violation of said provision denotes failure to the return required thereby. As originally worded in the 1977 NIRC, the provision penalizing the failure to file a return required thereby states:

> SECTION 73. Penalty for failure to file return or to pay tax. — **Any one liable** to pay the tax, **to make a return** or to supply information required under this Code, **who refuses or neglects** to pay such tax, **to make such return** or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both. (Emphasis and underscoring supplied)
>
> x x x x

In 1981, Batas Pambansa Blg. 135 amended the provision to read:

> Sec. 73. Penalty for failure to file return or to pay tax. — **Any one liable** to pay the tax, **to make a return** or to supply information required under this Code, **who refuses or neglects** to pay such tax, **to make such return** or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than Two thousand pesos or by

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[128] *In re Fahey*, 8 Cal.3d 842, 851-852 (1973).

> imprisonment for not more than six months, or both: Provided, however, **That an individual with compensation income taxable under Section 21 (a) of this Code and where the tax withheld from such compensation income is final shall be exempt from the penalty for failure to pay the tax on such compensation income and to file a return thereon at the designated period.** (Emphasis and underscoring supplied)
>
> x x x x

In 1985, the NIRC was overhauled by P.D. No. 1994, which introduced major changes to the structure and the individual provisions of the tax code. Accordingly, the penal provision on failure to file tax returns was renumbered and amended to include the modifier "willfully":

> Sec. 288. Failure to file return, supply information, pay tax, withhold and remit tax. — **Any person required under this Code or by regulations promulgated thereunder to** pay any tax, **make a return**, keep any records, or supply any information, **who willfully fails to** pay such tax, **make such return**, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not less than five thousand pesos nor more than fifty thousand pesos, or imprisoned for not less than six months and one day but not more than five years, or both.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor be fined not less than three thousand pesos or imprisoned for not more than one year, or both. (Emphasis and underscoring supplied)

The modifier "willfully" was retained in the next major amendment of the NIRC in 1997:

> SECTION 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.— **Any person required under this Code or by rules and regulations promulgated thereunder to** pay any tax, **make a return**, keep any record, or supply correct and accurate information, **who willfully fails to** pay such tax, **make such return**, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue

> office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years. (Emphasis and underscoring supplied)

The first element of the offense has remained constant throughout the amendments: the offender must be a person required to file a return under the NIRC or regulations promulgated thereunder. The second element of the offense, as originally worded, contemplates both *refusal* and *neglect* to file a return. Notably, the 1981 version expressly exempts compensation income earners from liability thereunder. The introduction of the modifier "willfully" in the 1985 version puts it in line with the US Internal Revenue Code, and appears to limit the scope of the provision to *intentional* failure to file a return, effectively decriminalizing neglect to file.

As applied to Marcos, Jr.'s case, which covers his returns for the years his 1982 to 1985, the applicable laws and elements of the offense of failure to file return may be summarized as follows:

Year	Deadline for filing return	Law applicable to filing of return	Essential element of the offense under applicable law
1982	March 15, 1983	NIRC 1977	Refusal or neglect to file return
1983	March 18, 1984	NIRC, as amended in 1981[129]	Refusal or neglect to file return, compensation income earners exempted
1984	March 18, 1985	NIRC, as amended in 1981	Refusal or neglect to file return, compensation income earners exempted
1985	March 18, 1986	NIRC, as amended in 1985[130]	Willful failure to file return

In fine, the offense, as originally defined and made applicable to Marcos, Jr.'s case, makes no distinction as to the intent of the offender. The mere failure to file a return is penalized, whether it be borne of neglect or of refusal. Moreover, under the applicable law for the years 1983 and 1984, failure to file a return is not penalized when the person is a pure compensation income earner. Under the 1985 amendment, only willful failure to file is penalized. Thus, based on the textual evolution of the provision alone, it may already be concluded that failure to file tax return is not fraudulent *per se*. As early as 1974, the Supreme Court has already held that the provisions of the NIRC distinguish between fraud and omission with respect to the the non-filing of

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[129] Batas Pambansa Blg. 135 provided for its effectivity on January 1, 1982; but was published only on May 2, 1983.

[130] Presidential Decree No. 1984 was published on December 2, 1985, and had an effectivity date of January 1, 1986.

tax returns. In a case involving the application of Section 332 of the 1933 NIRC, as amended,[131] the Supreme Court held that:

> x x x the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.[132]

Crucially, this distinction between fraud and omission in the NIRC's rules on tax returns has already been cited by the Court to support the conclusion that failure to file tax return does not involve moral turpitude, since it does not *necessarily* involve fraud. That case,[133] serendipitously, also involves Marcos, Jr., who was then sought to be disqualified from serving as executor of his father's estate on the basis of the moral turpitude of his conviction under the 1997 CA Decision:

> Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming arguendo that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.
>
> x x x x
>
> **The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual.** This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.
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> The same is illustrated in Section 51 (b) of the NIRC which reads:
>
> (b) Assessment and payment of deficiency tax — x x x

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131 This provision has essentially been retained in the 1977 NIRC as Section 319 thereof; and as Section 222 under the amendments introduced by Presidential Decree No. 1994.

132 *Aznar v. Court of Tax Appeals*, 157 Phil. 510, 523. (1974)

133 *Republic v. Marcos II*, 612 Phil. 355 (2009).

> In case a person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list . . . . (Emphasis Supplied)
>
> Likewise, in *Aznar v. Court of Tax Appeals*, this Court observed:
>
> > To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity", "fraud" and "omission". (Emphasis Supplied)
>
> Applying the foregoing considerations to the case at bar, **the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation.** Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.[134]

Furthermore, it must be noted that under the 1981 amendments to the NIRC, which govern the filing of Marcos, Jr.'s income tax returns for 1983 and 1984, failure to file a return is not even penalized if the taxpayer earned purely compensation income. As the *ponencia* and Justice Japar B. Dimaampao (Justice Dimaampao) point out, this is because under the withholding tax collection regime, the responsibilities of collecting the tax and complying with the requirements of the tax code, including the filing of the income tax return, are vested in the withholding agent, which in Marcos, Jr.'s case, is the provincial government of Ilocos Norte.[135] The *ponencia* and Justice Dimaampao again correctly point out that, under the amendments introduced by the TRAIN Law, the NIRC has now enshrined into statute the withholding system of collecting income tax from pure compensation income

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[134] Id. at 375-377. Emphasis and underscoring supplied; citations omitted.

[135] *Ponencia*, pp. 53-54. NIRC, as amended up to Batas Pambansa Blg. 135, Section 91(a), and Annex A thereof; NIRC, as amended up to Presidential Decree No. 1994, Section 82(g). With respect to government employees, the unit or agency concerned is responsible for withholding. 1977 NIRC, Sections 90(c), 91, and 94.

earners, which is complemented by a provision on substituted filing.[136] Here, it has been established that Marcos, Jr. was an elected official of Ilocos Norte during the period in question, and earned compensation income as such. There is likewise no proof within the records of this case that he earned any other form of income during said period.

A fact-based approach also supports the conclusion that Marcos, Jr.'s conviction under the 1997 CA Decision does not involve moral turpitude, primarily because the appellate court did not find any circumstance or indicia that Marcos, Jr.'s failure to file income tax returns from 1982 to 1985 was motivated by a fraudulent intent to evade payment of income tax. First, it has been established in the COMELEC proceedings, through a certification issued by the Local Finance Committee of the Province of Ilocos Norte, that taxes were withheld from Marcos, Jr.'s compensation from 1982 to 1985.[137] Second, it is judicially recognized that the Marcoses fled the Philippines in February 1986, and were able to return only in 1991,[138] when the investigation into their tax liabilities was already ongoing. Finally, the record shows that Marcos, Jr. eventually desisted from contesting his conviction before this Court, and paid the tax liability as imposed upon him in the 1997 CA Decision.[139] These circumstances indicate the lack of fraudulent intent to evade income tax liability on the part of Marcos, Jr.

For the foregoing reasons, I concur in the *ponencia*.

SAMUEL H. GAERLAN
Associate Justice

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136 *Ponencia*, p. 55.
137 Id. at 84.
138 *Marcos v. Manglapus*, supra note 2; *Republic v. Sandiganbayan*, 309 Phil. 488, 490 (1994).
139 *Ponencia*, pp. 8, 82-84.