

## THE HAGUE CONVENTION FRAMEWORK DEVELOPMENT OF CRIMINAL WEAPON AS DOMESTIC VIOLENCE MARKET PROBLEM OF AGGRESSIVE TAX AS INTIMATE PARTNER DEONTOLOGY

**Zharama Llarena**

LLM International Tax Law student, Faculty of Media and Communication, Bournemouth University, UK

*Email: zharllarena21@yahoo.com.ph*

### **ABSTRACT**

*Corporate Governance is a systematic design of stakeholders and their corporate social responsibility to advocate sustainable development. Tax aggressiveness is the obligation of the company to provide revenue distribution to public sector. Unlawful behavior on tax aggressiveness is known as tax evasion while tax avoidance is not a violation and serves as a loophole to the taxation system. UNCITRAL model law is a legal arbitration concept of making “commercial” expand to other comparable jurisdiction of international trade. Hague Convention drafted travaux preparatoires to conceptualize a legal framework of making the commercial transactions universal to other extended territories in terms of international trade law. This paper aims to develop tax avoidance based on statutory interpretation concerning Hague Convention as its extrinsic material to extend the legal principle of travaux preparatoires, hence, utilizing UNCITRAL legal modelling framework to make commercial transactions universal to trade law, for addressing legal gaps in marketing behavior of taxation system involving intellectual property, thus, in lack of legal measures in protecting public safety resulting to increase in domestic violence proportional to massive terrorism serving as professional deontology problem. Therefore, in terms of tax avoidance, the strict liability of the company must be addressed with constitutional issues and commercial responsibilities of marketing its product designed with elemental performance of domestic violence.*

**Keywords:** *Domestic Violence, Corporate Governance, Aggressive Tax, Deontology, Criminal Weapon*

### **INTRODUCTION**

Corporate Governance is crucial in maintaining the systematic framework of a company for strengthening its authoritative liability to shareholder in terms of corporate goals in compliance with their code of conduct. It is important to discuss conceptual issues encountered within the directed organizational functions of business ethics resulting to controlled shareholders. Hence, good governance is the art of exhibiting its optimum control in executing its corporate code of conduct for troubleshooting the problems encountered by the company.

The practice of corporate governance influences company value by leading their shares to multiples of high stock price and lessening the anticipated capital expenditures of equity. It is effective to conduct harmonious alignment in management ownership associated with controlling the interest of the corporate system. Thus, corporate governance is an organizational system designed to practice business ethics related to its structural, procedural, and cultural mechanisms. Majority of countries under developing economies manifest the essence of corporate governance in relation to

firm value increment. Hence, every country has their own distinct corporate value for comparison to others pertaining to their corporate governance of sustainable development (Widiatmoko, 2020).

The intended design of business activities strongly focuses on philanthropic concerns affecting society, investors, and their immediate community to fulfill the goals and resolving ethical issues addressed on trilogy of corporate governance. Managerial tools are integral actions made by the firm to execute their corporate code of conduct in resolving issues concerning stakeholders and management to maintain sustainable development on various resources. Hence, corporate governance serves as the key framework to address and resolve problems pertaining to company behaviors of its management and stakeholders, such as the business community, employees, and shareholders, particularly case-related issues on legal ethics of corporate crimes. Thus, research discussions pertaining to the scope of corporate governance had shown significant correlations with social responsibility of its management to their company profit (Huynh, 2020).

Corporate social responsibility (CSR) is a cultural notion of company standard and principles aiming to produce an incremental interest of stakeholders resulting to positive social and economic impact of the company. Hence, its liability can be defined as fulfilling the philanthropic means of business ethics to conduct its business transactions towards economic profit of the firm and its community in majority of the time. Therefore, it establishes a strong relationship between management and its community to execute the philanthropic and trustworthy communication of business ethics to advocate sustainable development towards economic

success. Hence, the integration of corporate social responsibility marks a distinction between charity and its established goal of economic success based on philanthropic compliance of global commerce. Therefore, it is a discipline of corporate governance to handle the needs of environmental authorities and organizations for compliance of philanthropic goals beyond commercial transactions and create strategic integral actions for sustainable development of innovation and advancements to promote public welfare and safety (Gouda & Sharma, 2018).

Corporate Governance advocates code of conduct that must be strictly observed within and every context of business transactions. Hence, it is essential that human rights in terms of their corporate social responsibility of promoting public welfare and safety relative to sustainable development of intellectual property as exhibited by their professional deontology be addressed as the goals of this paper such as the materials needed to express the tax avoidance crucial for domestic violence. Thus, statutory interpretation must be developed for sourcing the loopholes in taxation system pertaining to commercial transactions of domestic weapons with strict liability of its intended design to perpetrate criminal acts of killing relative to massive terrorism.

## **METHOD**

The Government sector utilizes the tax contribution to facilitate sustainable development of advocating public welfare and safety. As specified in article 23A of the 3<sup>rd</sup> Amendment Act of the 1945 Constitution, the tax impositions are vital instruments for the nation to fund the improvements of its people which are deemed to be compulsory as legal regulations of enhancing economic success of

its society. Hence, taxes are enforceable obligations, as well as compliance for constitutional promotion of monetary freedom, of improving the welfare of its people by functional fulfillment of revenue redistribution.

However, corporate taxes are perceived as a barrier or impediment of diminishing the income of the company. Hence, the private business sectors do not always acknowledge the levied tax of the government and tend to pay the tax sector the lowest possible revenue the public society may receive from them. Hence, the distinct interests of the business companies caused conflicts with the goals of the government in exercising the revenue distribution with the same constitutional compliance of advocating public welfare and safety, since commercial transactions perceive taxes as a burden due to apparent net income reduction due to personal interests of the owner of welcoming prosperity in his own constitutional expense of making successful earnings per annum within his business jurisdiction.

Aggressive tax performances are exhibitions of carrying out tax savings and non-compliance behavior concerning regulations in taxes. Majority of business companies benefit from regulatory loopholes as tax burden removal to generate company savings. Hence, tax aggressiveness of companies is legally and technically considered as a lack of violation in tax regulations (Handayani, 2019).

The act of tax evasion shows differences in tax liability removal of government taxes and its deferred commercial profit challenges versus public revenues as cost minimization. Thus, tax evasion must be clearly explained to draw distinction with tax avoidance as the former is an apparent performance of tax evasion and the latter is

defined as tax avoidance. For legal compliance of the constitutional arrangement and its amendments, tax planning is effective to uphold the tax law as pre-emptive doctrine of the constitution. Unfortunately, tax avoidance from revenue aggressiveness has no known violative actions against the law, while tax evasion can be persecuted for criminal liabilities (Salhi & Jarboui, 2020).

The United Nations Convention on Contracts for the International Sale of Goods (CISG) has resolved dissimilarities observed in culture, language, and legal operation for the global provision of widely recognizing contract process in relation to selling of goods. This convention highly augments the potential ability of international trade to expand the interpretation and application of contract law in harmony with its ultimate design as efficiency must be directly associated with the sale of goods (Hidy & Diener, 2020).

In 1981, the Working Group created and drafted model law for International Contract Practices. Subsequently, after a 21-day diplomatic conference on 1985, United Nations Commission on International Trade Law (UNCITRAL) adopted a new model law system designed to be applied limitedly to arbitrations concerning international commercial transactions. Thus, there is a strong demand to employ commercial laws to its utmost extent beyond a particular territory. It is apparent that commercial laws vary technically per jurisdiction, thus, legal principles must be exercised to apply those mechanisms to disputed limitations since the practice of law should be made comparable to other regions.

Based on Article 1(3), international arbitration is considered in the specified matter of conditions, such as business places of parties involved, and their contract

performance are not within the same jurisdiction or country. Meanwhile, Article 1(1) defines on its explanatory footnote that “commercial” in nature must be broadly interpreted to cover all aspects of transactions to emphasize the fulfillment of economic goals in relation to business ethics (Hoellering, 1986).

In 1952, under art 28 of 1954 Hague Convention, using exercise of international law for universal jurisdiction, governmental authorities drafted the legal context of travaux preparatoires as conceptual design restricted within a framework under common criminal jurisdiction based on strict liability, thus, its purpose should not be used for a different consideration although imposed obligations are limited not to engage in universal territory of criminal offenses due to comparable incapacity of the U.S. constitution to make it an ordinary jurisdiction common to all of their federal states (O’Keefe, 2010). Hence, based on Article 1(5) of UNCITRAL Model Law, the advocacy of implementing uniformity to another territorial jurisdiction is restricted (Mantilla-Serrano & Adam, 2008).

## RESULT AND DISCUSSION

### A. Murder Liability

Under of ss (1)(a) to (e) s 302 of Criminal Code 1899 (Qld) defines murder as an unlawful killing (purpose or design of the action) of another individual with malice aforethought (intentional degree of the mind). Furthermore, in the absence of malice aforethought as its intentional degree of the mind to kill another person, the offender may not be charged appropriately with murder (Criminal Code 1899).

Based from s 320 of the Code and observed in R v Reid [2006] QCA 202, a grave body injury is considered a crime comprising a performance lacking any

purpose or intent on the part of the perpetrator: see *Kaporonovski v The Queen* (1973) 133 CLR 209. From a recent verdict in *Stevens v The Queen* (2005) 80 ALJR 91, the perpetrated serious body damage under s 320 failed to establish connection of intent or purpose in relation to the issue of crime. The violation of perpetrating grave body damage under Code s 320 meet satisfactorily s 23(2) of the Code terms that:

*“(2) Without the design to inflict a particular outcome as must be stated clearly to be a crime element, comprising either in part or in whole of the transaction, the outcome is irrelevant due to lack of inflicted element.”*

Furthermore, under s 317(b) of Reid case, the purpose is uttered distinctly to inflict a specific outcome, such a serious disease transmission, to be a crime element of transferring the disease with known design. In contrary, s 320 expresses absence of such statements. The violation under s 320 is thus, comprising solely of crime perpetration, in the lack of intent element as also observed in *Kaporonovski v The Queen* (1973) 133 CLR 209. Moreover, in the recall of s 23(3) of the Code, the jury states that:

*“(3) Lacking any other distinct statement, the unclear intent of an individual is inadmissible in regard of establishing a relevant connection of criminal liability. (R v Reid, 2006).*

Proof of propensity or similarity is a particular character form of inclination, commonly pertaining to unlawful fact of performance. This principle is also known as “restricted type of incidental fact,” which can also be observed as a sub-class of inclination fact: see *Pfennig v The Queen* (1995) 182 CLR 461, at 482–483 and 464–465, Mason CJ, Deane and Dawson JJ. This law report discusses the satisfaction of evidence it can apply and match to the perpetration of

violations in a way that other crucial elements for crime conviction are lacking for support of the charge of accusation. Hence, this mechanism is commonly applied in a general sense without exact accuracy: see *Makin v Attorney-General (NSW)* [1894] AC 57. Hence, under this principle interpretation, the Makin formula integrates duplication of the identified proof of correlation, with allowance of other facts for uncertain second crucial element for completion of accuracy in terms of question of facts.

Furthermore, the Makin formulation for its development in common law is described as proof presentation of identical facts in order to exhibit its association, elemental cohesion, or strong correlation in order to restrain biases resulting to integration of underlying principles for the first element to constitute a strong degree of improbable statistical theory of accident adequate for valid acceptance, only with the presence of other prejudicial degree of evidence in its second principle: see *DPP v Boardman* [1975] AC 421.

Gibbs CJ interpreted his decision at 533-534 of *Sutton v The Queen* (1984) 152 CLR 528:

*It is still crucial to refrain materials or facts with high degree of probability or uncertainty, even though the proof may be relevant for admission as there must always be strong emphasis on double security in comparison with similar proof of fact. Hence, the facts of high coincidence, although it may be legally accepted is deemed for exclusion if the effect of its biases is significantly more superior resulting to uncertainty and inaccuracy in weight of its legal value.*

Brennan J, at 547-548 of *Sutton* case explained his decision that the similar

proof of fact is observed as an exception to rule of admission:

*Prior to the trial judge's exercise of his freedom for admitting similar proof of fact, crucial principles must be adequate that the merely statistical proof of evidence apparently surpasses its high probative effect. It is the prejudicial cogency of fact in relation with irrelevant biases that it may result to ascertain exclusion.*

Deane J had a similar decision through interpretation at 559-560 with Brennan J:

*The similar proof of fact is merely unacceptable for general rule application. It is for the investigation of the prosecution to review any such fact that can be considered as an exception to the basic rule. However, if the prosecution failed to corroborate events of a particular case, along with its whole context of fact, the similar proof of fact apparently has cogent coincidence, on issue of evidence, which is separated from any biased effects as proof of sole tendency, and will exhibit rejection concerning with the exclusion rule (Hemming & Layton, 2017).*

Lord Diplock stated his decision in *Hyam v DPP* [1975] AC 55, 86, that there must be a clear element of design for a specified criminal responsibility as stated:

*"In English law, clear specification must be exhibited for a particular mind state as to generate an observed evil result in order to express distinctly behind the object of the action. The required mens rea for satisfaction of a particular criminal offence must be appropriate with the declared purpose of state of mind as imposed by legislation or statutory interpretation of common law".*

Hence, an offender must have perpetrated a physical performance, *actus reus*, together with the mental element, *mens rea* for a criminal violation to be satisfied and it must happen at the same transaction, otherwise, criminal liability is invalid for legal defense (Halsbury's Laws of Australia).

### B. Manslaughter Liability

Under s 304A (1) of Criminal Code 1899 (Qld) manslaughter is defined as an unlawful killing of another person which comprises negligence that specifies clearly the degree of purpose in the offender's mind to act in a state of impaired ability to understand a state of inherent inflictions or induced violence under the event of lethal perpetration. Moreover, s 304A (2) states that negligence or extreme recklessness must be delineated clearly to constitute manslaughter as diminished liability (Criminal Code, 1899).

As a general principle in common law, every criminal offence needs a particular mental element such as negligence, malice aforethought, and recklessness. There are appearances utilized to ascertain the mental element involving fraudulently, knowingly, dishonestly, willfully, maliciously, and unlawfully (Halsbury's Laws of Australia).

Based from s 23 of the Code applied in *R v Taiters; ex parte Attorney-General* (1996) QCA 232, the trial judges stated that:

*"In regard with the expressed Code provisions concerning negligence and omitted acts, an individual is not legally liable for an omitted perpetrated distinct enough in order to be considered a separate act exercising the individual's intent, or for an accidental situation."*

At 405 in *Van Den Bemd* case, an admissible observation stated that:

*"The examination is an apparent foreseeability for the occurrence of the outcome as a correlated element."*

In reference to *R v Knutsen* and *R v Tralka* (1965) Qd R 225, the Court stated:

*"The current situation declares distinctly that the issues are correlated for clear satisfaction of an individual's death was certain to be likely as a result of the delivered punches of the accused that death could not have been foreseen if not for the absence of those punches (R v Taiters, 1996)."*

According from its general purpose, elimination pertains to application of real evidence in relation to oral declaration and proofs. The real evidence concept illustrates a thing generally been described as physical objects. Real evidence can be divided into 2 types based on actual or direct portion of the transaction resulting to litigation or present for illustrative designs, such charts, maps, and models, which may be utilized for the intent of connecting the relationship of other evidence. According to s 52 of the uniform evidence legislation, conflation pertains to a broader consequence of evidence to be cited other than the means declared by the witnesses in connection to the illustration of conceptual intent. An essential point to emphasize is that the "original document" rule cannot influence real evidence, thus, its classes exhibit duplication and replicas of the main transaction.

One type of real evidence is a photograph depiction of road accident events, crime incidents, and damages to a victim, which is of great help for elucidation of declared evidence. At 299 of *Alexander v The Queen* (1981) 145 CLR 395, Stephen J stated some specific issues in photographs:

*Photographic illustrations vary in nature out of numerous means as*

*exhibited in a two dimensional state and stationary condition, as taken pictures, although how clear it presents, may just be a form of conceptual purpose.*

Maps, charts, and models are demonstrative or illustrative types of real evidence for the aid intent in finding the relevance of other evidence which cannot be considered as commonplace of direct evidence. At 631 of R v Alexander [1979] VR 617, McInerney and Murphy JJ interpreted the difference between a demonstration and a view: It is crucial to warrant the distinct condition to delineate the taking of demonstrative fact and the viewing of evidence.

Events that are proximate in space or time to the transaction matter demonstrated for indivisibility are known res gestae. Hence, these are occurrences deemed to be included in the incident. It generally pertains to uttered statements of individuals who participated in the transaction. It is considered as hearsay rule exception due to spontaneous statements which sounds more original and legal as these were the generated outcomes during the anguish of the incident.

There are two means in which mechanisms can be permitted in transaction as a hearsay rule exception, but an event can also be allowed as a genuine fact if it is a crucial connection resulting to form a portion of a whole incident. This transaction effect can lead to other rules of exception for proof.

The lawful outcome of this event is important as: (1) utterances or events are considered as testimonial value for rule exception against hearsay, and (2) occurrences in the event are accepted under relevant proofs as explained under s 55(1) of evidence for uniform legislation. In Attwood

v The Queen (1960) 102 CLR 353, at 360-361, the common law of High Court stated:

*In common law, relevant facts are defined as the accuracy or degree of intent must be present in order to justify the factual evidences and incidents solving the parts and statements of event inclined to define, ascertain or give way to the transaction creating the main problem. It needs significantly crucial element in relation to charged accusation which must be consistent with the unlawful offence.*

Professor Stone defined the law of event based from his “Rea Gesta Reagitata” Law Quarterly Review article, at 68, as an intent of the mind being disclosed from a diverse designs reacting in a correlated and compensated situation, and emphasized:

*“An accepted proof must satisfy five specified types for proper evaluation of a decision within a transaction. First, the issue of evidences; second, immediate evidence in correlation to the main evidence; third, spontaneous statements constituting an admissible means of completing issue of evidence for relevance of the incident; fourth, all types of evidences forming a significant correlation admissible if joined together and irrelevant if the other element is lacking; and fifth, declarations deemed to be relevant for non- admission of a hearsay rule”.*

### **The Tax Avoidance Interpretation as a Loophole to Domestic Violence**

There are logical debates in favor and contrary to legal formalism approach and judicial activism arbitration. Addressing gaps on parliamentary system and its accompanied legislative amendments fulfills the formalist duty of exercising the constitutional powers of the government.

The public must feel the presence of the justice system for security ties of statutory interpretation, specifically when values are emphasized for public safety as to gain rightful intuitive outcome. Statutory interpretation is a judicial activism process of developing the right answer based on presumptions, rules, extrinsic materials, and written laws. It is illustrated as a hermeneutical circle since engineering deeper thoughts based on provisional interpretations is inclined for a different and lucid understanding of an innovative reasoning approach. Hence, using a mathematical principle, statutory interpretation (Sanson, 2016) is expressed as the following equations to elucidate and show that strict liability must be equivalent with product designs to measure the commercial obligation of tax avoidance for public interests concerning their safety and protection as constitutional right.

Based on the given statutory interpretation formula:

$$\text{ISSUE} + \text{RULES} = \text{OUTCOME}$$

Hence:

$$\text{RULES} = \frac{\left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle - \text{MAXIMS} + \text{PRESUMPTIONS}}{\text{EXTRINSIC MATERIALS} = \text{HISTORY} + \text{DEBATES} + \text{DICTIONARIES}}$$

$$\text{EXTRINSIC MATERIALS} = \frac{\left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle - \text{MAXIMS} + \text{PRESUMPTIONS}}{\text{RULES}}$$

$$\text{EXTRINSIC MATERIALS} = \frac{\left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle - \frac{\text{MAXIMS}}{\text{RULES}} + \frac{\text{PRESUMPTIONS}}{\text{RULES}}}{\text{RULES}}$$

$$\text{EXTRINSIC MATERIALS} = \frac{\text{PRESUMPTIONS}}{\text{RULES}} - \frac{\text{MAXIMS} - \left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle}{\text{RULES}}$$

$$\frac{\text{PRESUMPTIONS} - \text{EXTRINSIC MATERIALS}}{\text{MAXIMS} - \left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle} = \frac{\text{RULES}}{\text{RULES}}$$

$$\frac{\text{PRESUMPTIONS} + \left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle}{\text{MAXIMS} + \text{EXTRINSIC MATERIALS}} = \frac{\text{RULES}}{\text{RULES}}$$

$$\text{PRESUMPTIONS} + \left\langle \frac{\text{WORDS}}{\text{CONTEXT}} \times \text{PURPOSE} \right\rangle = \frac{\text{MAXIMS} + \text{EXTRINSIC MATERIALS}}{\text{RULES}}$$

Equation (9) is shown below to interpret the loopholes in tax avoidance. The exhibition of tax aggressiveness is directly proportional with patented product as uppercase shows strong financial evidence of commercial market value (economic profit), while lowercase symbols illustrate sources of tax avoidance relative to elements of the product design as exhibited in its strict liability serving as legal gaps to promote domestic violence as intimate partner crime for violation of human rights, thus, if duplication of jurisdiction is implied, the universality of international commercial transactions in terms of UNCITRAL modelling system for international trade law is employed to the strict liability concerning the patented product with elemental designs of domestic violence in relative proportion to massive terrorism.

$$\Lambda + \left\langle K \times \beta \right\rangle = \frac{\tau + \alpha}{\theta}$$

Where:

- $\Lambda$  = Uppercase lambda
- $\beta$  = Uppercase beta
- $\alpha$  = Lowercase alpha
- $\theta$  = Lowercase theta
- $K$  = Uppercase kappa



$\tau = \text{Lowercase tau}$

Since:

$$\Lambda = \frac{\tau + \alpha}{\beta} \frac{\partial (K)}{\partial (\theta)}$$

However, tax avoidance, in relation to statutory interpretation, did not exhibit relationship of equal ratio between strict liability and patented product. Equations (11) to (21) show that tax avoidance generates a loophole in taxation system in terms of domestic violence as criminal partner of intended killing weapons when strict liability is applied in relation to patented products.

$$\text{TAX AVOIDANCE} = \frac{\text{UNCITRAL} + \text{HAGUE CONVENTION}}{\text{PRODUCT DESIGN}} \frac{\partial \left( \frac{\text{SUBSTANCE}}{\text{UCC}} \right)}{\partial (\text{TRAVAUX PREPARATOIRES})}$$

Since:

$$\Lambda = \frac{\partial (\kappa) / \beta}{\partial (\theta) / \tau + \alpha}$$

$$\text{TAX AVOIDANCE} = \frac{\partial \left( \frac{\text{SUBSTANCE}}{\text{UCC}} \right) / \text{PRODUCT DESIGN}}{\partial (\text{TRAVAUX PREPARATOIRES}) / \text{UNCITRAL} + \text{HAGUE CONVENTION}}$$

Hence:

$$\Lambda = \frac{\partial \ln \beta}{\partial \ln \theta}$$

$$\text{TAX AVOIDANCE} = \frac{\partial \ln \text{PRODUCT DESIGN}}{\partial \ln \text{TRAVAUX PREPARATOIRES}}$$

Since:

**ISSUE + RULES = OUTCOME**

**ISSUE = RULES – OUTCOME**

Thus:

$$\Delta = \Lambda - X$$

**STRICT LIABILITY = TAX AVOIDANCE – PRODUCT DESIGN**

Where:

$X = \text{Uppercase chi}$

$\Delta = \text{Uppercase delta}$

Therefore:

**ISSUE + RULES = OUTCOME**

**TAX AVOIDANCE = STRICT LIABILITY + PRODUCT DESIGN**

## CONCLUSION

The design of corporate governance illustrates an obligation mechanism of the

stakeholders to promote sustainable development in their corporate social responsibility. Stakeholders such as the board director, members, shareholders, investors, and employees, have the duty of being liable to render tax contribution to the government sector. There are misconducts in tax aggressiveness, namely, tax evasion and tax avoidance. It is known that tax evasion is a crime, while tax avoidance serves as a loophole in legal contexts of clearly expressing that a violation has been perpetrated by the company. Hence, development of tax avoidance based on statutory interpretations is a great tool to make the company, in terms of marketing their patent product designed with elements of domestic violence proportional to massive terrorism, still liable for the usage of the deadly weapons not included in the legislation of excise tax.

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