

J. Y. Interpretation No.152 (May 12, 1978) \*

**ISSUE:** What is the meaning of “identical charge” as provided in the Criminal Code?

**RELEVANT LAWS:**

Article 56 of the Criminal Code (刑法第五十六條); J.Y. Interpretation Yuan-tze No. 2185 (司法院院字第二一八五號解釋).

**KEYWORDS:**

successive acts (連續數行為), same offenses (同一之罪名), general criminal intent (概括之犯意), offenses with the same criminal elements (構成犯罪要件相同之罪名).\*\*

**HOLDING:** The so-called “same offense” prescribed in Article 56 of the Criminal Code refers to the situation where a defendant with a general criminal intent commits several successive acts which have the same criminal elements. The determination criteria and examples of the “same offense” and a “offender” set forth in J.Y. Yuan-tze No. 2185 that are inconsistent with the aforementioned leg-

**解釋文：**刑法第五十六條所謂「同一之罪名」，係指基於概括之犯意，連續數行為，觸犯構成犯罪要件相同之罪名者而言。本院院字第二一八五號解釋，關於「同一之罪名」之認定標準及成立連續犯之各例，與上開意旨不合部分，應予變更。

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\*\* Contents within frame, not part of the original text, are added for reference purpose only.

islative intent and purpose shall thus be modified accordingly.

**REASONING:** Article 56 of the Criminal Code provides that when several successive acts of a defendant may establish the fact of commission of the same offenses, the defendant may be prosecuted for only one offense, but the punishment prescribed for such offense may be increased up to one half. Thus, to be prosecuted for only one offense, the defendant's several successive acts must meet the following three requirements: (1) the defendant must possess a general criminal intent when he commits the successive acts; (2) the defendant commits several successive acts; and (3) the several successive acts of the defendant constitute the same offenses. The so-called "same offense" prescribed in Article 56 of the Criminal Code refers to the situation where a defendant with a general criminal intent commits several successive acts which have the same criminal elements. A defendant is considered to be a serial offender if he possesses a general criminal intent when he commits several success-

**解釋理由書：**按刑法第五十六條規定：「連續數行為而犯同一之罪名者，以一罪論。但得加重其刑至二分之一。」故連續犯之成立，其要件有三：1.基於概括之犯意。2.連續數行為。3.犯同一之罪名。所謂「同一之罪名」，係指基於概括之犯意，連續數行為，觸犯構成犯罪要件相同之罪名者而言。蓋連續數行為為所成立之數個犯罪，其構成要件相同，而非基於概括之犯意者，固不成立連續犯；其係基於概括之犯意者，仍分別處罰，則失之苛刻；如基於概括之犯意，連續數行為所侵之法益性質相同而其構成犯罪要件互異者，亦按連續犯論處，又失之寬縱，難以遏阻犯罪，維持社會安寧秩序及刑罰之公平。本院院字第二一八五號解釋，關於「同一之罪名」之認定標準及成立連續犯之各例，與上開意旨不合部分，應予變更。

sive acts constituting offenses with the same criminal elements. This is because to prosecute such defendant for more than one offense for his successive acts is too harsh. However, a defendant is not considered to be a serial offender if he possesses a specific criminal intent when he commits several successive acts constituting offenses with different criminal elements. This is because to prosecute such defendant for only one offense is too lenient. Such leniency is insufficient to deter crimes, maintain social order and to maintain the fairness of criminal punishment. The determination criteria and examples of the “same offense” and a “offender” set forth in J.Y. Yuan-tze No. 2185 that are inconsistent with the aforementioned legislative intent and purpose shall thus be modified accordingly.