MANGUERA OUTLINE
CONSTITUTIONAL LAW I
COMPREHENSIVE VERSION

PRELIMINARIES

I. POLITICAL LAW

A. Definition of Political Law

Branch of public law[1] which deals with the organization and operation of the governmental organs of the state and defines the relations of the state with the inhabitants of its territory.[2]

B. Subdivisions of Political Law

1. Law of public administration
2. Constitutional law
3. Administrative law
4. Law of public corporations[3]

C. Basis of Philippine Political Law

The principles of government and political law of the Philippines are fundamentally derived from American jurisprudence. This conditions was the inevitable outcome of the establishment of the American rule in the Philippines. When Spain ceded the Phils. to the US, the Spanish Political laws were automatically displaced by those of the US.[4]

II. CONSTITUTION

A. Definition of Constitution

Comprehensive Definition*:* That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.[5] (Cooley)

American sense**:** A constitution is a written instrument by which the fundamental powers of government are established, limited, and defined and by which these powers are distributed among several departments, for their more safe and useful exercise, for the benefit of the body politic. (Justice Miller quoted by Bernas)

With particular reference to the Philippine Constitution: That written instrument enacted by direct action of the people by which the fundamental powers of the government are **established**, **limited** and **defined,** and by which those powers are **distributed** among several departments for their safe and useful exercise for the benefit of the body politic. (Malcolm, Philippine Constitutional Law, p. 6)

[1] **Public law** is understood as dealing with matters affecting the state, the act of state agencies, the protection of state interests. **Private law** deals with the regulation of the conduct of private individuals in their relation with one another.
As thus conceived public law consists of political law, criminal law and public international law. Private law includes civil and commercial law.

[2] Vicente Sinco, Philippine Political Law 1, 10th ed., 1954.

[3] Vicente Sinco, Philippine Political Law 1, 10th ed., 1954.

[4] Vicente Sinco, Philippine Political Law 2, 10th ed., 1954.

[5] This definition is comprehensive enough to cover written and unwritten constitutions. (Cruz, Constitutional Law)

In other words: **It is the supreme written law of the land**.[6]

B. Philosophical View of the Constitution

The Constitution is a social contract. (Marcos v. Manglapus)

Viewed in the light of the Social Contract Theories, the Constitution may be considered as the Social Contract itself in the sense that it is the very basis of the decision to constitute a civil society or State, breathing life to its juridical existence, laying down the framework by which it is to be governed, enumerating and limiting its powers and declaring certain fundamental rights and principles to be inviolable.

The Constitution as a political document may be considered as the concrete manifestation or expression of the Social Contract or the decision to abandon the 'state of nature' and organize and found a civil society or State.

According to Dean Baustista, "the Constitution is a social contract between the government and the people, the governing and the governed."[7] *(ASM: I don't necessarily agree with this statement. As a social contract, the Constitution, I think is a contract between and among the people themselves and not between the government and the people. The government is only an "effect" or consequence of the social contract of the people. In other words, the government is only a creature of the Constitution. Hence, the government cannot be a party to a contract that creates it. In the 1987 Philippine Constitution, it reads, "We the sovereign Filipino people…in order to build a …society and establish a government… ordain and promulgate this Constitution.")*

According to Dean Bautista, "the Constitution reflects majoritarian values but defends minoritarian rights."[8]

C. Purpose of the Constitution

To prescribe the permanent framework of a system of government, to assign to the several departments their respective powers and duties, and to establish certain first principles on which the government is founded.[9] (11 Am. Jur. 606 cited in Cruz)

Why would a society generally committed to majority rule choose to be governed by a document that is difficult to change?

a) To prevent tyranny of the majority
b) Society's attempt to protect itself from itself.
c) Protecting long term values form short term passions.[10]

D. Constitution as a Municipal Law

A constitution is a municipal law. As such, it is binding only within the territorial limits of the sovereignty promulgating the constitution.[11]

E. Classification

A. (1) Rigid[12]
   (2) Flexible
B. (1) Written[13]
   (2) Unwritten
C. (1) Evolved[14]
   (2) Enacted
D. (1) Normative- adjusts to norms
   (2) Nominal –not yet fully operational
   (3) Semantic-perpetuation of power

The Constitution of the Philippines is written, conventional and rigid.

F. Qualities of good written constitution

1. Broad[15]

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[6] *See* People v. Pomar, 46 Phil 440. Bernas Commentary xxxvii (2003 ed).

[7] Andres D. Bautista, Introduction to Constitutional Law 1, Slide 3 June 16, 2007.

[8] Andres D. Bautista, Introduction to Constitutional Law 1, Slide 3 June 16, 2007.; Majoritarianism is a traditional political philosophy which asserts that a majority of the population is entitled to a certain degree of primacy in the society, and has the right to make decisions that affect the society.

[9]

[10] Andres D. Bautista, Introduction to Constitutional Law 1, Slide 4 June 16, 2007.

[11] Bernas Commentary, p 5(2003 ed).

[12] ***Rigid constitution*** is one that can be amended only by a formal and usually difficult process; while a ***flexible constitution*** is one that can be changed by ordinary legislation. (Cruz, Constitutional Law p 5)

[13] A ***written constitution*** is one whose precepts are embodied in one document or set of documents; while an ***unwritten constitution*** consists of rules which have not been integrated into a single, concrete form but are scattered in various sources, such as statues of a fundamental character, judicial decisions, commentaries of publicists, customs and traditions, and certain common law principles. (Cruz, Constitutional Law pp 4-5)

[14] An ***enacted or conventional*** constitution is enacted, formally struck off at a definitive time and place following a conscious or deliberate effort taken by a constituent body or ruler; while a ***cumulative or evolved*** is the result of political evolution, not inaugurated at any specific time but changing by accretion rather than by systematic method. (Cruz, Constitutional Law p 5)

[15] **Broad.** Because it provides for the organization of the entire government and covers all persons and things within the territory of the State and also because it must be comprehensive enough to provide for every contingency. (Cruz, Constitutional Law pp 5-6)

2. Brief[16]
3. Definite[17]

G. Essential parts of a good written constitution

1. Constitution of government[18]
2. Constitution of liberty[19]
3. Constitution of sovereignty[20]

[Social and economic rights]

H. Interpretation/Construction of the Constitution[21]

In Fransisco v HR, the SC made reference to the use of well-settled principles of constitutional construction, namely:

1. Verba Legis[22]
2. Ratio legis et anima[23]
3. Ut magis valeat quam pereat[24]

I. Permanence and Generality of constitutions

A constitution differs from a statute, it is intended not merely to meet existing conditions, but to govern the future.

It has been said that the term 'constitution' implies an instrument of a permanent nature.[25]

J. Brief Constitutional History

1. Malolos Constitution
2. The American Regime and the Organic Acts
3. The 1935 Constitution
4. The Japanese (Belligerent) Occupation
5. The 1973 Constitution
6. The 1987 Constitution

K. The 1987 Constitution

The 1987 Constitution is the 4th fundamental law to govern the Philippines since it became independent on July 4, 1946.

Background of the 1987 Constitution

1. Proclamation of the Freedom Constitution
   a. *Procalamation No. 1*, February 25, 1986, announcing that she (Corazon Aquino) and VP Laurel were assuming power.
   b. *Executive Order No.1,* (Febrauary 28, 1986)
   c. *Procalamation No.3,* March 25, 1986, announced the promulgation of the Provisional (Freedom) Constitution, pending the drafting and ratification of a new Constitution. It adopted certain provisions in the 1973 Constitution, contained additional articles on the executive department, on government reorganization, and on existing laws. It also provided of the calling of a Constitutional Commission to be composed of 30-50 members to draft a new Constitution.
2. Adoption of the Constitution
   a. *Proclamation No. 9*, creating the Constitutional Commission of 50 members.
   b. Approval of the draft Constitution by the Constitutional Commission on October 15, 1986
   c. Plebiscite held on February 2, 1987
   d. *Proclamation No. 58,* proclaiming the ratification of the Constitution.
3. Effectivity of the 1987 Constitution: **February 2, 1987**

Features of 1987 Constitution[26]

1. The new Constitution consists of 18 articles and is excessively long compared to the 1935 and 1973 constitutions.
2. The independence of the judiciary has been strengthened with new provisions for appointment thereto and an increase in its authority, which now covers even political questions formerly beyond its jurisdiction.
3. The Bill of Rights of the Commonwealth and Marcos constitutions has been considerably improved in the 1987 Constitution and even bolstered with the creation of a Commission of Human Rights.

III. CONSTITUTIONAL LAW

A. Concept of Constitutional Law

[16] **Brief.** It must confine itself to basic principles to be implemented with legislative details more adjustable to change and easier to amend. (Cruz, Constitutional Law pp 4-5)

[17] **Definite.** To prevent ambiguity in its provisions which could result in confusion and divisiveness among the people. (Cruz, Constitutional Law pp 4-5)

[18] **Constitution of Government.** The series of provisions outlining the organization of the government, enumerating its powers, laying down certain rules relative to its administration and defining the electorate. (ex. Art VI, VII, VIII and IX)

[19] **Constitution of Liberty.** The series of proscriptions setting forth the fundamental civil and political rights of the citizens and imposing limitations on the powers of government as a means of securing the enjoyment of those rights. (Ex. Article III)

[20] **Constitution of Sovereignty.** The provisions pointing out the mode or procedure in accordance with which formal changes in the fundamental law may be brought about. (Ex. Art XVII)

[21] Antonio B. Nachura, Outline/Reviewer in Political Law (2006 ed.)

[22] **Plain meaning rule**. Whenever possible the words used in the Constitution must be given their ordinary meaning except when technical terms are employed.

[23] **Interpretation according to spirit**. The words of the Constitution should be interpreted in accordance with the intent of the framers.

[24] The constitution has to be interpreted as a whole.

[25] Ruling Case Law, vol.6, p16)

[26] Cruz, Political Law.

Constitutional law is a body of rules resulting from the interpretation by a high court of cases in which the validity, in relation to the constitutional instrument, of some act of government…has been challenged. (Bernas Commentary xxxviii)

Constitutional law is a term used to designate the law embodied in the constitution and the legal principles growing out of the interpretation and application made by courts of the constitution in specific cases. (Sinco, Phil. Political Law)

Constitutional law is the study of the maintenance of the proper balance between authority represented by the three inherent powers of the State and liberty as guaranteed by the Bill of Rights. (Cruz, Constitutional Law)

Constitutional law consist not only of the constitution, but also of the cases decided by the Supreme Court on constitutional grounds, i.e., every case where the ratio decidendi is based on a constitutional provision. (Defensor-Santiago, Constitutional Law)

B. Types of Constitutional law[27]

1. English type[28]
2. European continental type[29]
3. American type[30]

C. Weight of American Jurisprudence

In the case of Francisco v. HR, (2003) The Supreme Court speaking through Justice Carpio Morales opined:

> **"**American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only **limited persuasive merit insofar as Philippine constitutional law is concerned**. As held in the case of *Garcia vs. COMELEC*, "[i]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs." Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, **"[w]e have cut the umbilical cord**.""

*(But see the case of **Neri v. Senate Committees** where the Court cited many American cases)*

IV. BASIC CONCEPTS

Constitutionalism
Philippine Constitutionalism
Doctrine of Constitutional Supremacy
Republicanism
Principle of Separation of Powers
System of Checks and Balances
Judicial Review
Due Process

A. Constitutionalism

Constitutionalism refers to the position or practice that government be limited by a constitution.

The doctrine or system of government in which the governing power *is limited* by enforceable rules of law, and concentration of power is limited by various checks and balances so that the basic rights of individuals and groups are protected.

B. Philippine Constitutionalism

Constitutionalism in the Philippines, understood in the American sense, dates back to the ratification of Treaty of Paris. Then it grew from a series of organic documents. These are:

(1) Pres. Mc Kinleys' Instruction to the Second Phil. Commission,
(2) Phil. Bill of 1902,
(3) Phil. Autonomy Act of 1916. (Bernas, Commentary xxxviii)

C. Doctrine of Constitutional Supremacy (2004 Bar Exam Question)

If a law violates any norm of the constitution, that law is null and void; it has no effect. (*This is an overstatement, for a law held unconstitutional is not always wholly a nullity*)

The American case of *Marbury v. Madison* laid down the classic statement on constitutional supremacy" "It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it."

Constitutional supremacy produced judicial review.[31]

D. Republicanism

The essence of republicanism is ***representation*** and *renovation*, the selection by the citizenry of a corps of public functionaries who derive their

[27] Vicente Sinco, Philippine Political Law 67, 10th ed., 1954.

[28] Characterized by the absence of a written constitution.

[29] There is a written constitution which gives the court no power to declare ineffective statutes repugnant to it.

[30] Legal provisions of the written constitution are given effect through the power of the courts to declare ineffective or void ordinary statutes repugnant to it.

[31] Defensor Santiago, Constitutional Law 7.

mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.[32]
(More discussion of Republicanism under Article II)

E. Principle of Separation of Powers

Essence. In essence, separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary. Each is prevented from invading the domain of others. (Bernas, Commentary 656, 2003 ed.)
Division and Assignment. Its starting point is the assumption of the *division* of the functions of the government into three distinct classes—the executive, the legislative and the judicial**.** Its essence consists in the ***assignment*** of each class of functions to one of the three organs of government.[33]

Theory. The theory is that "a power definitely assigned by the Constitution to one department can **neither be surrendered nor delegated** by that department, nor vested by statute in another department or agency."[34]

Reason. The underlying reason of this principle is the assumption that arbitrary rule and abuse of authority would inevitably result from the concentration of the three powers of government in the same person, body of persons or organ.[35]

More specifically, according to Justice Laurel, the doctrine of separation of powers is intended to:
1. Secure action
2. To forestall overaction
3. To prevent despotism
4. To obtain efficiency[36]

History. Separation of powers became the pith and core of the *American system of government* largely through the influence of the French political writer Montesquieu. By the establishment of the American sovereignty in the Philippines, the principle was introduced as an inseparable feature of the governmental system organized by the United States in this country.[37]

Limitations on the Principle
1. System of Checks and Balances
2. Existence of overlapping powers[38]

F. Checks and Balances

The Constitution fixes certain limits on the independence of each department. In order that these limits may be observed, the Constitution gives each department certain powers by which it may definitely restrain the other from exceeding their authority. A system of checks and balances is thus formed.[39]

To carry out the system of checks and balances, the Constitution provides:
1. The acts of the legislative department have to be presented to the executive for approval or disapproval.
2. The executive department may veto the acts of the legislature if in its judgment they are not in conformity with the Constitution or are detrimental to the interests of the people.
3. The courts are authorized to determine the validity of legislative measures or executive acts.
4. Through its pardoning power, the executive may modify or set aside the judgments of the courts.
5. The legislature may pass laws that in effect amend or completely revoke decisions of the courts if in its judgment they are not in harmony with its intention or policy which is not contrary to the Constitution.[40]
6. President must obtain the concurrence of Congress to complete certain significant acts.
7. Money can be released from the treasury only by authority of Congress.[41]

G. Judicial Review

Definition. Judicial review refers to the power of the courts to test the validity of governmental acts in light of their conformity with a higher norm (e.g. the constitution).

Expression of Constitutional Supremacy. Judicial review is not an assertion of superiority by the courts over the other departments, but merely

[32] Cruz, Political Law.
[33] Vicente Sinco, Philippine Political Law 131, 10th ed., 1954.
[34] Williams v. US, 289 US 553 (1933).
[35] Vicente Sinco, Philippine Political Law 131, 10th ed., 1954.
[36] Pangasinan Transportaion Co. v. PSC, 40 O.G., 8th Supp. 57.
[37] US v. Bull, 15 Phil 7, 27.
[38] The power of appointment is one of these. Although this is executive in nature, it may however be validly exercised by any of the three departments in selecting its own subordinates precisely to protect its independence. (Vicente Sinco, Philippine Political Law 136, 10th ed., 1954).
[39] Vicente Sinco, Philippine Political Law 135, 10th ed., 1954.
[40] Tarlac v. Gale, 26 Phil. 338 cited in Vicente Sinco, Philippine Political Law 135, 10th ed., 1954.
[41] Bernas, Commentary 656, 2003 ed.

an expression of the supremacy of the Constitution.[42] Constitutional supremacy produced judicial review, which in turn led to the accepted role of the Court as "the ultimate interpreter of the Constitution."[43]

Judicial Review in Philippine Constitution. Unlike the US Constitution[44] which does not provide for the exercise of judicial review by their Supreme Court, the Philippine Constitution expressly recognizes judicial review in Section 5 (2) (a) and (b) of Article VIII of the Constitution.
(*More discussion of Judicial Review under Article VIII*)

H. Due Process

Origin: By the 39th chapter of the Magna Carta wrung by the barons from King John, the despot promised that "*no man shall be taken, imprisoned or disseized or outlawed, or in any manner destroyed; nor shall we go upon him, nor send him, but by the lawful judgment of his peers or by the **law of the land***."
In 1335, King Edward III's Statute 28 declared that "no man, of what state or condition whoever be, shall be put out of his lands, or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought in to answer by ***due process of law***." It is this immortal phrase that has resounded through the centuries as the formidable champion of life, liberty and property in all-freedom loving lands. (Cruz)

Definition[45]: Embodiment of the sporting idea of **fair play**.[46] It is the responsiveness to the supremacy of reason, obedience, to the dictates of justice.[47] Due process is a guaranty against arbitrariness on the part of the government. Observance of both substantive and procedural rights is equally guaranteed by due process.[48]
(*More discussion of Due Process under Article III*)

[42] Angara v. Electoral Commission, 63 Phil 139.
[43] *See* Cooper v. Aaron, 358 US 1 (1956)
[44] The case of *Marbury v. Madison* established the doctrine of judicial review as a core legal principle in American constitutional system: "So if a law be in opposition to the constitution; of both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."
[45] The idea that laws and legal proceedings must be fair. Due process is best defined in one word- **fairness.**
[46] Frankfurter, Mr. Justice Holmes and the Supreme Court pp 32-33
[47] Ermita-Malate Hotel & Motors Association v. City of Manila
[48] (Tupas v. CA)

PREAMBLE

I. Meaning
II. Function
III. Social Contract Theory

I. Meaning

Preamble means "to walk before." (*Praeambulus: Walking in front)*

II. Function

Function
Origin/Authorship
Scope and Purpose

A. Functions

1. It sets down the origin, scope and purpose of the Constitution.[49]
2. It enumerates the primary aims and expresses the aspirations of the framers in drafting the Constitution.[50]
3. Useful as an aid in the construction and interpretation of the text of the Constitution.[51]

Thus, Preamble is a source of light.[52] It is not a source of rights or obligations. (Jacobson v. Massachusetts, 197 U.S. 11, 22 (1905).

B. Origin/Authorship

Its origin, or authorship, is the will of the "sovereign Filipino people."

The identification of the Filipino people as the author of the constitution also calls attention to an important principle: that the document is not just the work of representatives of the people but of the people themselves who put their mark of approval by ratifying it in a plebiscite.[53]

C. Scope and Purpose

"To build a just and humane society as to establish a government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and the regime of truth, justice, freedom, love, equality and peace."

III. Social Contract Theory

ASM: I submit that the Preamble is somehow a manifestation of the Social Contract Theory as it states: "*We the sovereign Filipino people…in order to build a…society and establish a government… do ordain and promulgate this constitution*."

[49] Bernas Primer at 1 (2006 ed.)
[50] Cruz, Philippine Political Law, p. 49 (1995 ed).
[51] Cruz, Philippine Political Law, p. 49 (1995 ed).
[52] Bernas Primer at 1 (2006 ed.)
[53] Bernas Commentary, p 4(2003 ed).

ARTICLE I: NATIONAL TERRITORY

I. Territory
II. Archipelago
III. Archipelagic Principle

I. Territory

A. What is Territory

Territory is the fixed portion of the surface of the earth inhabited by the people of the state.[54]

Territory as an element of a state means an area over which a state has **effective control.**[55]

B. What does territory include?

Territory includes land, maritime areas, airspace and outer space.[56]

Airspace
- Each state has exclusive jurisdiction over the air above its territory.
- The consent for transit must be obtained from the subject nation.
- Aircrafts not engaged in international air service, shall have the right to make flights into or in transit non-stop across its territory and to make steps for non-traffic purposes without the necessity of obtaining prior permission and subject to the right of the State flown over to require landing. (Chicago Convention on International Civil Action)

Outerspace
- Sovereignty over airspace extends only until where outerspace begins. (50-100 miles from earth)

Different areas <u>beyond</u> the land territory
- Territorial Seas (12 N.mi from baseline)
- Contiguous Zone (24 N.mi from baseline)
- Exclusive Economic Zone/Patrimonial Sea (200 N.mi from baseline)
- High seas (Waters beyond territorial sea)

C. Significance of Territory

Control over territory is of the essence of a state (Las Palmas case). Certain rights and authority are exercised within the state's territory.

1. State's sovereignty is over its:
   - Land territory (and airspace above it)
   - Internal Waters (and airspace above it and seabed under it)
   - Archipelagic Waters(and airspace above it and seabed under it)
   - Territorial Sea (and airspace above it and seabed under it)
2. The coastal state has a right against innocent passage[57] in its internal waters.
3. The coastal state exercises authority over the area (contiguous zone) to the extent necessary to prevent infringement of customs, fiscal, immigration or sanitation authority over its territorial waters or territory and to punish such infringement.
4. The coastal state has rights over the economic resources of the sea, seabed and subsoil.

D. Scope of Philippine National Territory Defined in Article I, Section 1.

It includes:
(1) The Philippine archipelago;
(2) All other territories over which the Philippines has sovereignty or jurisdiction;
(3) The territorial sea, seabed, subsoil, insular shelves and other submarine areas corresponding to (1) and (2). Moreover, (1) and (2) consist of terrestrial, fluvial and aerial domains.[58]

E. Territories Covered under the Definition of Article 1

1. Those ceded to the US by virtue of the **Treaty of Paris** on December 10, 1898.
2. Those defined in the treaty concluded between the US and Spain (**Treaty of Washington**) on November 7, 1990, which were not defined in the Treaty of Paris, specifically the islands of Cagayan, Sulu and Sibuto.
3. Those defined in the treaty concluded on January 2, 1930, between the US and Great Britain (**Treaty with Great Britain**), specifically the Turtle and Mangsee islands.
4. The island of Batanes, which was covered under a general statement in the 1935 Constitution.
5. Those contemplated in the phrase "belonging to the Philippines by historic right or legal title" in the 1973 Constitution.[59]

E. "All other territories which the Philippines has sovereignty and jurisdiction."

[54] Cruz, Philippine Political Law, p. 16 (1995 ed).
[55] Bernas, An Introduction to Public International Law, 97 (2002 ed).
[56] Bernas, An Introduction to Public International Law, 97 (2002 ed).
[57] Passage that is not prejudicial to the peace, good order or security of the coastal state.
[58] Bernas Primer at 4 (2006 ed.)
[59] Cruz, Philippine Political Law, p. 18 (1995 ed).

This includes any territory which presently belongs or might in the future belong to the Philippines through any of the internationally modes of acquiring territory.

- Batanes islands
- Those belonging to the Philippines by historic right or legal title (Sabah, the Marianas, Freedomland)

II. Archipelago

Archipelago
Archipelagic State
Archipelagic Waters
Philippine Archipelago

A. Archipelago

Archipelago is a body of water studded with islands.[60]

B. Archipelagic State

Archipelagic state means a state constituted wholly by one or more archipelagos and may include other islands. (Article 46 (a) of UNCLOS)

C. Archipelagic Waters

According to UNCLOS, Archipelagic waters refers to areas enclosed as internal waters by using the baseline method ***which had not been previously considered as internal waters***. *(See* Article 53 of UNCLOS)

> **Article 8(2) of UNCLOS:** *Where the establishment of a straight baseline in accordance with the method set forth in Article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.*

According to UNCLOS, in "archipelagic waters", a right of innocent passage shall exist in these waters. **But,** the Philippines made a reservation, thus, " *The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessel to transit passage for international navigation."*

Bernas: The reservation is *ad cautelam*. The claim made in the Constitution took effect in 1973 before the 1982 Law of the Sea Convention was formulated. Article 8(2) of the Convention itself says that the new rule on archipelagic waters applies only to "areas which had not previously been considered as" internal waters.[61]

D. Philippine Archipelago

The Philippine archipelago is that body of water studded with islands which is delineated in the Treaty of Paris, modified by the Treaty of Washington and the Treaty of Great Britain.

III. Archipelagic Principle

Archipelagic Doctrine
Archipelago Doctrine of Article I
Elements of Archipelagic Doctrine
Purpose of Archipelagic Doctrine

A. Archipelagic Doctrine

(1989 Bar Question)

It is the principle whereby the body of water studded with islands, or the islands surrounded with water, is **viewed as a unity** of islands and waters together forming **one integrated unit**. For this purpose, it requires that baselines be drawn by connecting the appropriate points of the "outermost islands to encircle the islands within the archipelago. We consider all the waters enclosed by the straight baselines as internal waters.[62]

B. Elements of Archipelagic Doctrine

1. Definition of internal waters[63]
2. The straight line method of delineating the territorial sea.

Straight Baseline Method- drawn connecting selected points on the coast without departing to any appreciable extent from the general direction of the coast. RA 3046 and RA 5446 have drawn straight baselines around the Philippines.

(The problem with the straight baseline method is that it conflicts with the Law of the Sea because it recognizes the right of innocent passage in archipelagic waters. That is why we made a reservation. However, as Bernas pointed out, the reservation is *ad cautelam)*

C. Purposes of Archipelagic Doctrine

1. Territorial Integrity
2. National Security
3. Economic reasons

[60] Bernas Primer at 4 (2006 ed.)

[61] Bernas Commentary, p 28(2003 ed).

[62] Cruz, Philippine Political Law, p. 17 (1995 ed).

[63] Internal waters refer to "all waters landwards from the baseline of the territory."
Note: The Philippines considers all waters connecting the islands as internal waters.

It is said that the purpose of archipelagic doctrine is to protect the territorial integrity of the archipelago. Without it, there would be "pockets of high seas" between some of our islands and islets, thus foreign vessels would be able to pass through these "pockets of seas" and would have no jurisdiction over them.

D. Archipelago Doctrine in Article I, Section 1

(1989 Bar Question)

"The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of internal waters of the Philippines"

Q: Differentiate archipelagic waters, territorial sea and internal waters. (2004 Bar Question)
A:

According to UNCLOS, Archipelagic waters refers to areas enclosed as internal waters by using the baseline method ***which had not been previously considered as internal waters***. *(See* Article 53 of UNCLOS)

Territorial sea is an adjacent belt of sea with a breadth of 12 nautical miles measured from the baselines of a state and over which the state has sovereignty. (Article 2, 3 of UNCLOS)

Internal waters refer to "all waters landwards from the baseline of the territory." Is from which the breadth of territorial sea is calculated. (Brownlie, Principles of PIL) No right of innocent passage for foreign vessels exist in the case of internal waters. (Harris, Cases and Material on International Law, 5th ed., 1998, p.407)

Under Section 1, Article I of the 1987 Constitution, the internal waters of the Philippines consist of the waters around between and connecting the islands of the Philippine archipelago regardless of their breadth and dimensions including the waters in bays, rivers, and lakes.

Q: Distinguish briefly but clearly between the contiguous zone and the exclusive economic zone. (2004 Bar Question)

Contiguous zone is a zone contiguous to the territorial sea and extends up to twelve nautical miles from the territorial sea and over which the coastal state may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. (Article 33 of the Convention on the Law of the Sea.)

The EEZ extends 200 nautical miles from the baseline. The EEZ is recognized in the UN Convention on the Law of the Sea. Although it is not part of the national territory, exclusive economic benefit is reserved for the country within the zone.

By virtue of PD 1599, the Philippine declares that it has sovereign rights to explore, exploit, conserve and manage the natural resources of the seabed, subsoil, and superjacent waters. Other states are prohibited from using the zone except for navigation and overflight, laying of submarine cables and pipeline, and other lawful uses related to navigation and communication.

Q: Distinguish the flag state and the flag of convenience. (2004 Bar Question)

Flag state means a ship has the nationality of the flag of the state it flies, but there must be a genuine link between the state and the ship. (Article 91 of the Convention on the Law of the Sea)

Flag of convenience refers to a state with which a vessel is registered for various reasons such as low or non-existent taxation or low operating costs although the ship has no genuine link with the state. (Harris, Cases and Materials on International Law, 5th ed., 1998, p. 425.)

ARTICLE II
DECLARATION OF PRINCIPLES AND STATE POLICIES

I. Principles and State Policies

A. Description

This portion of the Constitution (Article II) might be called the **basic political creed of the nation.**[64]

B. Function of the "Declaration of Principles and State Policies" in the Constitution

It is the statement of the basic ideological principles and policies that underlie the Constitution. As such, the provisions shed light on the meaning of the other provisions of the Constitution and they are a **guide for all departments** of the government in the implementation of the Constitution.[65]

C. What are Principles? What are Policies?

Principles are binding rules which must be observed in the conduct of the government.[66]

Policies are guidelines for the orientation of the state.[67]

Note: The distinction between principles and polices is of little significance because not all of the six "principles" are self-executory and some of the "policies" already anchor justiciable rights.[68]

- Section 5 (maintenance of peace and order… promotion of general werlfare…) is a mere guideline. (Section 16 (right of the people to a balanced and healthful ecology is right-conferring provisions. (Oposa vs. Factoran)

> **Section 1.** The Philippines is a democratic and republican **State**. Sovereignty resides in the people and all government authority emanates from them.

II. State as a Legal Concept

Definition of a State
Elements of a State
Government
Acts of State
State Immunity

A. Definition of a State

A state refers to a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience.[69]

B. Elements of a State

1. People
2. Territory

[64] *See* Tanada v. Angara. *See* Vicente Sinco, Philippine Political Law 116 (11th ed., 1962).

[65] Bernas Primer at 7(2006 ed.)

[66] *See* IV RECORD OF THE CONSTITUTIONAL COMMISSION 768 and 580.

[67] *See* IV RECORD OF THE CONSTITUTIONAL COMMISSION 768 and 580.

[68] Bernas Commentary, p 37(2003 ed).

[69] Bernas Commentary, p 39 (2003 ed).

3. Sovereignty
4. Government

1. People

A community of persons sufficient in number and capable of maintaining the continued existence of the community and held together by a common bond of law.[70]

Different Meanings of "People" as used in the Constitution:

1. Inhabitants[71]
2. Electors[72]
3. Citizens[73]
4. Sovereign. The people organized collectively as a legal association is the state which sovereignty resides.[74]

2. Territory

Territory is the fixed portion of the surface of the earth inhabited by the people of the state.[75]

Territory as an element of a state means an area over which a state has **effective control.**[76]

3. Sovereignty

Definition
Kinds
Characteristics
Effects of Belligerent Occupation
Effects of Change in Sovereignty
Dominium v. Imperium
Jurisdiction
"Sovereignty resides in the people"

a. Sovereignty

The supreme and uncontrollable power inherent in a State by which that State is governed.[77]

In auto-limitation terms: It is the property of a State-force due to which it has *the exclusive capacity of legal determination and restriction*.

b. Kinds:

1. Legal
2. Political
3. Internal
4. External

Legal Sovereignty.

Cruz: Legal sovereignty is the authority which has the power to issue final commands. In our country, the Congress is the legal sovereign.[78]

Bernas: Legal sovereignty is the supreme power to affect legal interests either by legislative, executive or judicial action. This is lodged in the people but is normally exercised by state agencies[79]

(Bernas: *Political writers distinguish between legal sovereignty and political sovereignty. The former is described as the supreme power to make laws and the latter as the sum total of all influences in a state, legal or non-legal, which determine the course of law.* ***Sinco*** *prefers not to make the distinction and places legal sovereignty in the state itself considered as a juridical person.****)***

Political Sovereignty

Sum total of all the influences of a State, legal and non-legal which determine the course of law.

Internal Sovereignty

It refers to the power of the State to control its domestic affairs. It is the supreme power over everything within its territory.

External Sovereignty

Also known as ***Independence***, which is freedom from external control. It is the power of State to direct its relations with other States.[80]

c. Characteristics of Sovereignty

It is permanent, exclusive, comprehensive, *absolute*, indivisible, inalienable, and imprescriptible.[81]

But wait, in the case of Tanada v. Angara, it was held that sovereignty of a state ***cannot be absolute***. It is subject to limitations imposed by

[70] Bernas Commentary, p 40 (2003 ed).
[71] Article II, Section 15, 16; Article III, Section 2; Article XIII, Section 1.
[72] Article VII, Section 4; Article XVI, Section 2; Article XVIII, Section 25)
[73] Article II, Section 4; Article III, Section 7.
[74] Preamble; Article II, Section 1.
[75] Cruz, Philippine Political Law, p. 16 (1995 ed).
[76] Bernas, An Introduction to Public International Law, 97 (2002 ed).
[77] Garner cited in Cruz, Philippine Political Law, p. 26 (1995 ed).
[78] Cruz, Philippine Political Law, p. 26 (1995 ed).
[79] Bernas Primer at 8 (2006 ed.); Section 1 of Article II says: "Sovereignty resides in the people an all government authority emanates from them." Sovereignty in this sentence therefore can be understood as the source of ultimate legal authority. Since the ultimate law in the Philippine system is the constitution, sovereignty, understood as legal sovereignty, means the power to adapt or alter a constitution. This power resides in the "people" understood as those who have a direct hand in the formulation, adoption, and amendment or alteration of the Constitution. (Bernas Commentary, p 55 (2003 ed).
[80] Cruz, Philippine Political Law, p. 26 (1995 ed).
[81] Laurel v. Misa, 77 Phil 856.

membership in the family of nations and limitations imposed by treaties. The Constitution did not envision a hermit-type isolation of the country from the rest of the world. (2000 Bar Question)

d. Effects of Belligerent Occupation

As to political laws. No change of sovereignty during a belligerent occupation, the political laws of the occupied territory are ***merely suspended***, subject to revival under the *jus postliminium* upon the end of the occupation.

> Note that the rule suspending political laws affects only the ***civilian inhabitants*** of the occupied territory and is not intended to bind the enemies in arms. Also, the rule does not apply to the law on treason although decidedly political in character.

As to non-political laws. The non-political laws are ***deemed continued unless changed*** by the belligerent occupant since they are intended to govern the relations of individuals as among themselves and are not generally affected by changes in regimes of rulers.

As for judicial decisions. As for judicial decisions the same are valid during the occupation and even beyond except those of a political complexion, which are automatically annulled upon the restoration of the legitimate authority.[82]

e. Effects of Change in Sovereignty

As to political laws. Where there is a change in sovereignty, the political laws of the former sovereign are not merely suspended but ***abrogated*** unless they are retained or re-enacted by positive act of the new sovereign.

As to non-political laws. Non-political laws, continue in operation.

f. Imperium v. Dominium

Imperium. State's authority to govern. Covers such activities as passing laws, governing territory, maintaining peace and order over it, and defending against foreign invasion. This is the authority possessed by the State embraced in the concept of sovereignty.

Dominium. Capacity of the State to own property. Covers such rights as title to land, exploitation and use of it, and disposition or sale of the same.

g. Jurisdiction

Jurisdiction is the manifestation of sovereignty. The jurisdiction of the state is understood as both its authority and the sphere of the exercise of that authority.

Kinds of Jurisdiction:

1. **Territorial jurisdiction**- authority of the state to have all persons and things within its territorial limits to be completely subject to its control and protection.[83]
2. **Personal jurisdiction**- authority of the state over its nationals, their persons, property, and acts whether within or outside its territory (e.g. Art. 15,CC)
3. **Extra-territorial jurisdiction**- authority of the State over persons, things, or acts, outside its territorial limits by reason of their effect to its territory.
   Examples:
   1. Assertion of its personal jurisdiction over its nationals abroad; or the exercise of its rights to punish certain offenses committed outside its territory against its national interests even if the offenders are non-resident aliens;
   2. By virtue of its relations with other states or territories, as when it establishers a colonial protectorate, or a condominium, or administers a trust territory, or occupies enemy territory in the course of war;
   3. When the local state waives its jurisdiction over persons and things within its territory, as when a foreign army stationed therein remains under the jurisdiction of the sending states;
   4. by the principle of extra territoriality, as illustrated by the immunities of the head of state in a foreign country;
   5. Through the enjoyment or easements or servitudes, such as the easement of innocent passage or arrival under stress;
   6. The exercise of jurisdiction by the state in the high seas over its vessels; over pirates; in the exercise of the right to visit and search; and under the doctrine of hot pursuit;
   7. The exercise of limited jurisdiction over the contiguous zone and the patrimonial sea, to prevent infringement of its customs, fiscal, immigration or sanitary regulations.

[82] Cruz, Philippine Political Law, p. 28 (1995 ed

[83] Exempt are:
1. Foreign states, heads of state, diplomatic representatives, and consuls to a certain degree;
2. Foreign state property, including embassies, consulates, and public vessels engaged in non-commercial activities;
3. Acts of state;
4. Foreign merchant vessels exercising the rights of innocent passage or involuntary entry, such as the arrival under stress;
5. Foreign armies passing through or stationed in its territory with its permission;
6. Such other persons or property, including organizations like the United Nations, over which it may, by agreement, waive jurisdiction.

h. Juristic Theory of Sovereignty

The legalistic and analytical view of sovereignty considers the ***state as a corporate entity***, a juridical person.[84] It takes the state purely as a legal organism. It does not have anything to do at all with its social and historical background.

i. "Sovereignty resides in the PEOPLE"

The "people" in the sense in which it is used here refers to the ***entire citizenry considered as a unit***.[85]

4. Government

Government. That institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are impose upon the people forming that society by those who possess the power or authority of prescribing them.[86]

C Government

1. Government of the Republic of the Philippines

The Government of the Republic of the Philippines is a term which refers to the ***corporate governmental entity*** through which the functions of government are exercised throughout the Philippine Islands, including, save as the contrary appears from context, the various arms through which political authority is made effective in said Islands, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government. (Section 2 of the Revised Administrative Code (1917).
On the national scale, the term "government of the Philippines" refers to the three great departments. On the local level, it means the regional provincial, city municipal an barangay governments.
It does not include government entities which are given a corporate personality separate and distinct for the government and which are governed by the corporation law.

2. Government v. Administration

Government is the institution through which the state exercises power. Administration consists of the set of people currently running the institution.[87]

3. Functions of Government

(1) **Governmental** (Constituent)- are the compulsory functions which constitute the very bonds of society.

(2) **Proprietary** (Ministerial)—optional functions of the government for achieving a better life for the community. (Bacani v. NACOCO)

Governmental Function

- Implementation of the land reform may not strictly be "constituent" in the sense of *Bacani* but the compelling urgency with which the Constitution speaks of social justice does not leave any doubt that **land reform is** not an optional but **a compulsory function of sovereignty**. (ACCFA v. CUGCO)
- The functions of the Veterans Federation of the Philippines fall within the category of sovereign functions. (Veterans Federation of the Phils. V. Reyes 483 SCRA 526)
- The Manila International Airport Authority is a governmental instrumentality vested with corporate powers to perform its governmental function. It performs government functions essential to the operation of an international airport. (MIAA v. CA)
- Housing is a governmental function since housing is considered an essential service. (PHHC v. CIR)
- The NHA is tasked with implementing the governmental program of providing mass housing to meet the needs of Filipinos for decent housing. The NHA is exempt from paying docket fees in suits in relation to its governmental functions. (Badillo v. Tayag)
- The (RCA) Rice and Corn Administration is a government machinery to carry out declared government policy to stabilize the price of palay, rice, and corn and making it within the reach of average consumers. Its activity of buying and selling corn is only an incident to its **government function**. Hence, it is exempt from posting an appeal bond. (Republic v. CFI)
- The "AFP Retirement and Benefits System" is a government entity and its funds are in the nature of public funds (People v. Sandiganbayan)

Proprietary Function

- Undertaking to supply water for a price is considered a trade and not a governmental activity. (Spouses Fontanilla v. Maliaman)
- Civil Aeronautics Administration is in charge of the administration of MIA, it is performing proprietary functions, hence it can be sued even when the claim is based on a quasi-delict. (CAA v. CA)

4. Doctrine of Parens Patriae

Literally, "parent of the people." One of the important tasks of the government is to act for the State as *parens patriae*, or guardian of the rights of the people.[88]

5. Classification of Government on the Basis of Legitimacy

[84] Sinco, Philippine Political Law, p 18 (1954ed).
[85] Sinco, Philippine Political Law, p 19 (1954ed).
[86] US v. Dorr, 2 Phil 332 *cited in* Bacani v. NACOCO, 100 Phil. 468 (1956).
[87] Bernas Commentary, p 44(2003 ed).
[88] Cruz, Philippine Political Law, p. 23 (1995 ed).

1. De Jure Government
2. De Facto Government

De Jure Government. One established by authority of the legitimate sovereign.[89]

De Facto Government. One established in defiance of the legitimate sovereign.[90] It actually exercises power or control without legal title.[91]

3 Kinds of De Facto Government:

1. ***The government that gets possession and control or, or usurps, by force or by the voice of majority***, the rightful legal government and maintains itself against the will of the latter. (Such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as Protector.)
2. ***Established and maintained by invading military forces.*** That established as an independent government by the inhabitants of a country who rise in insurrection against the parent state (Such as the government of the Southern Confederacy in revolt against the Union during the war of secession in the United States.)
3. ***Government of paramount force.*** That which is established and maintained by military forces who invade and occupy a territory of enemy in the course of war.[92] (Such as the cases of Castine in Maine, which was reduced to a British possession in the war of 1812, and Tampico, Mexico, occupied during the war with Mexico by the troops of the US.) (Co Kim Chan v. Valdez , 75 Phil 113)

Note:
The government under Cory Aquino and the Freedom Constitution is a *de jure* government. It was established by authority of the legitimate sovereign, the people. It was a revolutionary government established in defiance of the 1973 Constitution. (In Re Letter of Associate Justice Puno, 210 SCRA 589 (1992).

The government under President Gloria Macapagal Arroyo established after the ouster of President Estrada is de jure government.[93]

***Sinco* on Revolution or Direct State Action:**
"It sometimes happens that the people rise in revolt against the existing administration [government] and through force or threats succeed in altering the constituted organs of the government. From the point of view of the existing constitutional plan, that act is illegal; but considered from the point of view of the sate as a distinct entity not necessarily bound to employ a particular government or administration to carry out its will, it is the direct act of the state itself because it is successful. As such, it is legal, for whatever is attributable to the state is lawful. This is the legal and political basis of the ***doctrine of revolution."***[94]

5. Presidential v. Parliamentary form of government (2006 Bar Exam Question)

The **presidential** form of government's identifying feature is what is called the "separation of powers."[95]

The essential characteristics of a **parliamentary** form of government are:

1. The members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature;
2. The government or cabinet consisting of the political leaders of the majority party or of a coalition who are also members of the legislature, is in effect a committee of the legislature;
3. The government or cabinet has a pyramidal structure at the apex of which is the Prime Minister or his equivalent;

[89] Bernas Primer at 9 (2006 ed.)

[90] Bernas Primer at 9 (2006 ed.)

[91] Cruz, Philippine Political Law, p. 23 (1995 ed).

[92] It has been held that the Second Republic of the Philippines was a *de facto* government of paramount force, having been established by the Japanese belligerent during the occupation of the Philippines in World War II.
The characteristics of this kind of de facto government are:

1. Its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government.
2. During its existence, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered by military authority, supported more or less directly by military force. (Co Kim Chan v. Valdez , 75 Phil 113)

By contrast, the Supreme Court unanimously held in *Lawyers League for a Better Philippines v. Corazon Aquino* that "the people have made the judgment; they have accepted the government of President Corazon Aquino which is in effective control of the entire country so that it is not merely a *de facto* government but in fact and law a *de jure government*. Moreover, the community of nations has recognized the legitimacy of the present government."

[93] Bernas Primer at 9 (2006 ed.)

[94] Sinco, Philippine Political Law, p 7 (1954ed).

[95] Bernas Primer at 10 (2006 ed.)

4. The government or cabinet remains in power only for so long as it enjoys the support of the majority of the legislature;
5. Both government and legislature are possessed of control devices which each can demand of the other immediate political responsibility. In the hands of the legislature is the vote of non-confidence (censure) whereby government may be ousted. In the hands of the government is the power to dissolve the legislature and call for new elections.[96]

Q: What constitutional forms of government have been experienced by the Philippines since 1935?
A: Presidential and presidential only.[97]

C. Acts of State

An act of State is done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him.[98]

Within particular reference to Political Law, an act of State is an act done by the political departments of the government and not subject to judicial review. An illustration is the decision of the President, in the exercise of his diplomatic power, to extend recognition to a newly-established foreign State or government.[99]

D. State Immunity

"The State cannot be sued without its consent." (Article XVI, Section 3)

(State immunity will be discussed under Article XVI, Section 3)

PRINCIPLES

III. Republicanism

Section 1. The Philippines is a **democratic and republican State**. Sovereignty resides in the people and all government authority emanates from them.

A. Republic

Republic is a representative government run by the people and for the people.[100]

Republican state is a state wherein all government authority emanates from the people and is exercised by representatives chosen by the people.[101]

B. Essential Features of Republicanism

The essence of republicanism is ***representation*** and ***renovation***. The citizenry selects a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.[102]

C. Manifestations of Republicanism

1. Ours is a government of laws and not of men. (Villavicencio v. Lukban, 39 Phil 778)
2. Rule of Majority (Plurality in elections)
3. Accountability of public officials
4. Bill of Rights
5. Legislature cannot pass irrepealable laws
6. Separation of powers

D. "Democratic State"

In the view of the new Constitution, the Philippines is not only a representative or republican state but also shares some aspects of direct democracy such as "initiative and referendum". The word democratic is also a monument to the February Revolution which re-won freedom through direct action of the people.

E. Constitutional Authoritarianism

Constitutional authoritarianism as understood and practiced in the Marcos regime under the 1973 Constitution, was the assumption of extraordinary powers by the President, including legislative and judicial and even constituent powers.[103]

Q: Is constitutional authoritarianism compatible with a republican state?
A: Yes if the Constitution upon which the Executive bases his assumption of power is a legitimate expression of the people's will and if the Executive who assumes power received his office through a valid election by the people.[104]

[96] Bernas Primer at 11 (2006 ed.)
[97] Bernas Primer at 11 (2006 ed.)
[98] Cruz, Philippine Political Law, p. 29 (1995 ed).
[99] Cruz, Philippine Political Law, p. 29 (1995 ed).
[100] Cruz, Philippine Political Law, p. 50 (1995 ed).
[101] Bernas Primer at 11 (2006 ed.)
[102] Cruz, Philippine Political Law, p. 50 (1995 ed).
[103] Bernas Primer at 12 (2006 ed.)
[104] Bernas Primer at 12 (2006 ed.)

IV. Renunciation of War/ Incorporation Clause/ Policy of PEJ-FCA with All Nations

> **Section 2.** The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

A. Renunciation of War

"The Philippines renounces war as an instrument of national policy…"
(Read along Preamble, Article II Secs. 7 &8; Article XVIII Sec. 25)

1. Aggressive War

The Philippines only renounces AGGRESSIVE war as an instrument of national policy. It does not renounce defensive war.

2. Philippines Renounces Not Only War

As member of United Nations, the Philippines does not merely renounce war but adheres to Article 2(4) of the UN charter which says: " All Members shall **refrain in their international relations from the threat or use of force** against the territorial integrity or political independence of any state, or in any other manner inconsistent with Purposes of the Untied Nations."

3. Historical Development of the Policy Condemning or Outlawing War in the International Scene:

1. ***Covenant of the League of Nations***- provided conditions for the right to go to war.
2. ***Kellogg-Briand Pact of 1928***- also known as the General Treaty for the Renunciation of War, ratified by 62 states, which forbade war as "an instrument of national policy."
3. ***Charter of the United Nations***- Prohibits the threat or use of force against the territorial integrity or political independence of a State.

B. Incorporation Clause

"The Philippines…adopts the generally accepted principles of international law as part of law of the land…"

1. Acceptance of Dualist View

Implicit in this provision is the acceptance of the ***dualist view*** of legal systems, namely *that domestic law is distinct from international law*. Since dualism holds that international law and municipal law belong to different spheres, international law becomes part of municipal law only if it is incorporated in to municipal law.[105]

2 Doctrine of Incorporation (1997 Bar Question)

Every state is, by reason of its membership in the family of nations, bound by the ***generally accepted principles of international law***, which ***are considered to be automatically part of its own laws***. This is the doctrine of incorporation.[106]

3. International Law

International Law
Traditional definition: It is a body of rules and principles of action which are binding upon civilized states in their relation to one another.
Restatement: The law which deals with the conduct of states and of international organizations and with their relations inter se, as well as with some other relations with persons, natural or juridical.

4. To What Elements of International Law does the principle of incorporation apply?

Since treaties become part of Philippine law only by ratification, the principle of incorporation applies only to ***customary law and to treaties which have become part of customary law***. [107]

5. Effect of Incorporation Clause

International law therefore can be used by Philippine courts to settle domestic disputes in much the same way that they would use the Civil Code or the Penal Code and other laws passed by Congress.[108]

C. Policy of PEJ-FCA with All Nations

"The Philippines…adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

Q: Does the affirmation of amity will all nations mean automatic diplomatic recognition of all nations?
A: No. Amity with all nations is an ideal to be aimed at. Diplomatic recognition, however, remains a matter of executive discretion.[109]

V. Supremacy of Civilian Authority

> **Section 3.** Civilian Authority is, at all times supreme over the military. The Armed Forces of the

[105] Bernas Commentary, p 61 (2003 ed).
[106] Cruz, Philippine Political Law, p. 55 (1995 ed).
[107] Bernas Commentary, p 61 (2003 ed).
[108] Bernas Commentary, p 61 (2003 ed).
[109] Bernas Primer at 13 (2006 ed.)

Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and integrity of the national territory.

A. Civilian Authority

That *civilian authority is at all times supreme over the military* is implicit in a republican system.[110] Still, it was felt advisable to expressly affirm this principle in the Constitution to allay all fears of a military take-over of our civilian government.[111]

It was also fittingly declared that the President, who is a civilian official, shall be the commander-in-chief of all the armed forces of the Philippines.[112]

Q: Does this mean that civilian officials are superior to military officials?
A: Civilian officials are superior to military official only when a law makes them so.[113]

B. Armed Forces of the Philippines

1. Reasons [in the constitution] for the existence of the armed forces

(1) As protector of the people and the State
(2) To secure the sovereignty of the State and the integrity of the national territory.[114]
(3) They may be called to prevent or suppress lawless violence, invasion or rebellion.[115]
(4) All Members of the armed forces shall take an oath or affirmation to uphold and defend the Constitution.[116]

2. Composition

The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. (Article XVI, Section 4)

3. On Politics

The armed forces shall be insulated from partisan politics. No member of the military shall engage directly or indirectly in any partisan political activity, except to vote. (Article XVI, Section 5)

Q: Is the provision an assertion of the political role of the military?
A: No. The phrase "**protector of the people**" was not meant to be an assertion of the political role of the military. The intent of the phrase "protector of the people" was rather to make it as corrective to military abuses experienced during martial rule.[117]

Q: Does this mean that the military has no military role?
A: ***Bernas:*** The military exercise of political power can be justified as a last resort—when civilian authority has lost its legitimacy.[118]
(This is dangerous.)

4 . Bar Question (2003)

Q: Is the PNP covered by the same mandate under Article II, Section 3?
A: No. This provision is specifically addressed to the AFP and not to the PNP, because the latter is separate and distinct from the former. (Record of the Constitutional Commission, Volume V, p. 296; Manalo v. Sistoza, 312 SCRA 239)

VI. Defense of State

Section 4. The prime duty of the government is to serve and protect the people. The Government may call upon the people to defend the state and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.

VII. Peace and Order

Section 5. The maintenance of peace and order, the protection of life, liberty and property, and the promotion of general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 5 is not a self-executing provision. It is merely a guideline for legislation. (Kilosbayan v. Morato)

Right to bear arms. The right to bear arms is a statutory, not a constitutional right. The license to carry a firearm is neither a property nor a property

[110] Cruz, Philippine Political Law, p. 67 (1995 ed).
[111] Cruz, Philippine Political Law, p. 67 (1995 ed).
[112] Article VII, Section 18.
[113] Bernas Primer at 13 (2006 ed.)
[114] Article II, Section 3.
[115] Article VII, Section 18. *See* IBP v. Zamora.
[116] Article XVI, Seciton 5.
[117] Bernas Commentary, p 66 (2003 ed).
[118] Bernas Commentary, p 66 (2003 ed).

right. Neither does it create a vested right. Even if it were a property right, it cannot be considered absolute as to be placed beyond the reach of police power. The maintenance of peace and order, and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties. (Chavez v. Romulo, 2004)

VIII. Separation of Church and State

Section 6. The separation of Church and State shall be inviolable.

A. Rationale

"Strong fences make good neighbors." The idea is to delineate boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions.[119]

B. Who is Prohibited from Interfering

Doctrine cuts both ways. It is not only the State that is prohibited from interfering in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters. [120](Cruz)

C. Separation of Church and State is Reinforced by:

1. Freedom of Religion Clause (Article III, Section 5)
2. Religious sect cannot be registered as a political party (Article IX-C, Section 2(5))
3. No sectoral representatives from the religious sector. (Article VI, Section 5 (2))
4. Prohibition against appropriation against sectarian benefit. (Article VI, 29(2)).

D. Exceptions

1. Churches, parsonages, etc. actually, directly and exclusively used for religious purposes shall be exempt from taxation. (Article VI, Section 28(3)).
2. When priest, preacher, minister or dignitary is assigned to the armed forces, or any penal institution or government orphanage or leprosarium, public money may be paid to them. (Article VI, Section 29(2))
3. Optional religious instruction for public elementary and high school students. (Article XIV, Section 3(3)).
4. Filipino ownership requirement for education institutions, except those established by religious groups and mission boards. (Article XIV, Section 4(2)).

[119] Cruz, Philippine Political Law, p. 65 (1995 ed).

[120] Cruz, Philippine Political Law, p. 65 (1995 ed).

STATE POLICIES

IX. Independent Foreign Policy

Section 7. The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.

The word "relations" covers the whole gamut of treaties and international agreements and other kinds of intercourse.[121]

X. Freedom from Nuclear Weapons

Section 8. The Philippines consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

A. Scope of Policy

The policy includes the prohibition not only of the possession, control, and manufacture of nuclear weapons but also nuclear arms tests.

B. Exception to the Policy

Exception to this policy may be made by the political department but it must be justified by the demands of the national interest.[122]

The policy does not prohibit the peaceful use of nuclear energy.[123]

C. Implication of the Policy for the Presence of American Troops

Any new agreement on bases or the presence of the troops, if ever there is one, must embody the basic policy of freedom from nuclear weapons. Moreover, it would be well within the power of government to demand ocular inspection and removal of nuclear arms.[124]

[121] Bernas Commentary, p 72 (2003 ed).

[122] Bernas Primer at 15 (2006 ed.)

[123] Bernas Primer at 15 (2006 ed.)

[124] Bernas Primer at 15 (2006 ed.)

XI. Just and Dynamic Social Order

Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a raising standard of living, and an improved quality of life for all.

XII. Social Justice

Section 10. The State shall promote social justice in all phases of national development

A. Definition of Social Justice

Social Justice is neither communism, nor despotism, nor atomism, nor anarchy, but the ***humanization of the laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.*** (Calalang v. Williams)

Social justice simply means the equalization of economic, political, and social opportunities with special emphasis on the duty of the state to tilt the balance of social forces by favoring the disadvantaged in life.[125]

XIII. Respect for Human Dignity

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

The concretization of this provision is found principally in the Bill of Rights and in the human rights provision of Article XIII.[126]

Facts: Petitioners questioned the constitutionality of PD 1869, which created the PAGCOR and authorized it to operate gambling casinos, on the ground that it violated Sections 11, 12 and 13 of Article II of the Constitution.
Held: These provisions are merely statements of policies which are not self-executing. A law has to be passed to implement them. (Basco v. PAGCOR, 197 DCRA 52)[127]

XIV. Family; Rearing the Youth

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the **life of the unborn from conception**. The natural and primary right and duty of parents in rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

A. Family

Family" means a stable heterosexual relationship. The family is not a creature of the State.[128]

B. Effect of the Declaration of Family Autonomy

It accepts the principle that the family is anterior to the State and not a creature of the State. It protects the family from instrumentalization by the State.[129]

C. Purpose of Assertion of Protection of the Unborn

The purpose of the assertion that the protection begins from the time of conception is **to prevent the State form adopting the doctrine in *Roe v. Wade*** which liberalized abortion laws up to the sixth month of pregnancy by allowing abortion any time during the first six months of pregnancy provided it can be done without danger to the mother.

D. Legal Meaning of the Protection Guaranteed for the Unborn.

[125] Bernas Primer at 16 (2006 ed.)

[126] Bernas Commentary, p 83 (2003 ed).

[127] Jacinto Jimenez, Political Law Compendium, 4 (2006 ed.)

[128] Bernas Commentary, p 84 (2003 ed).

[129] Bernas Primer at 16 (2006 ed.)

1. This is not an assertion that the unborn is a legal person.
2. This is not an assertion that the life of the unborn is placed exactly on the level of the life of the mother. (When necessary to save the life of the mother, the life of the unborn may be sacrificed; but not when the purpose is merely to save the mother from emotional suffering, for which other remedies must be sought, or to spare the child from a life of poverty, which can be attended to by welfare institutions.)[130]

E. Education

In the matter of education, the primary and natural right belongs to the parents. The State has a secondary and supportive role.

Foreign Language. The State cannot prohibit the teaching of foreign language to children before they reach a certain age. Such restriction does violence both to the letter and the spirit of the Constitution. (Meyer v. Nebraska)

Public School. The State cannot require children to attend ***only*** public schools before they reach a certain age. The child is not a mere creature of the State. Those who nurture him and direct his destiny have the right to recognize and prepare him. (Pierce v. Society of Sisters)

Religious Upbringing. The State cannot require children to continue schooling beyond a certain age in the honest and sincere claim of parents that such schooling would be harmful to their religious upbringing. Only those interests of the State "of the highest order and those not otherwise served can overbalance" the primary interest of parents in the religious upbringing of their children. (Wisconsin v. Yoder)

Parens Patriae. However, as *parens patriae*, the State has the authority and duty to step in where parents fail to or are unable to cope with their duties to their children.

XV. Women

> **Section 14.** The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

The provision is so worded as not to automatically dislocate the Civil Code and the civil law jurisprudence on the subject. What it does is to give impetus to the removal, through statutes, of existing inequalities. The general idea is for the law to ignore sex where sex is not a relevant factor in determining rights and duties. Nor is the provision meant to ignore customs and traditions.[131]

In *Philippine Telegraph and Telephone Co. v. NLRC, 1997,* the Supreme Court held that the petitioner's policy of not accepting or considering as disqualified from work any woman worker who contracts marriage , runs afoul of the test of, and the right against discrimination, which is guaranteed all women workers under the Constitution. While a requirement that a woman employee must remain unmarried may be justified as a "bona fide qualification" where the particular requirements of the job would demand the same, discrimination against married women cannot be adopted by the employer as a general principle.

XVI. Health

> **Section 15.** The State shall protect and promote the right to health of the people and instill health consciousness among them.

The provisions which directly or indirectly pertain to the duty of the State to protect and promote the people's right to health and well-being are not self-executory. They await implementation by Congress.[132]

XVII. Balanced and Healthful Ecology

> **Section 16.** The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Section 16 provides for enforceable rights. Hence, appeal to it has been recognized as conferring "standing" on minors to challenge logging policies of the government. (Oposa v. Factoran)

While the **right to a balanced and healthful ecology** is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights for it concerns nothing less than *self-preservation* and *self-perpetuation*. These basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. (Oposa v. Factoran,1993)

[130] Bernas Primer at 17 (2006 ed.)

[131] Bernas Primer at 18 (2006 ed.)

[132] *Tondo Medical Center Employees v. CA.* G.R. No. 167324, July 17, 2007.

On this basis too, the SC upheld the empowerment of the Laguna Lake Development Authority (LLDA) to protect the inhabitants of the Laguna Lake Area from the deleterious effects of pollutants coming from garbage dumping and the discharge of wastes in the area as against the local autonomy claim of local governments in the area. (LLDA v. CA, 1995)

XVIII. Education, Science and Technology

Section 17. The State shall give priority to education, science and technology, arts, culture and sports to foster patriotism, nationalism, accelerate social progress, and promote total human liberation and development.

(See Article XIV, Section 2)

This does not mean that the government is not free to balance the demands of education against other competing and urgent demands. (Guingona v. Caragüe)

In *Philippine Merchant Marine School Inc. v. CA,* the Court said that the requirement that a school must first obtain government authorization before operating is based on the State policy that educational programs and/or operations shall be of good quality and, therefore, shall at least satisfy minimum standards with respect to curricula, teaching staff, physical plant and facilities and administrative and management viability.

While it is true that the Court has upheld the constitutional right of every citizen to select a profession or course of study subject to fair, reasonable and equitable admission and academic requirements, the exercise of this right may be regulated pursuant to the police power of the State to safeguard health, morals, peace, ***education***, order, safety and general welfare.
Thus, persons who desire to engage in the learned professions requiring scientific or technical knowledge may be required to take an examination as a prerequisite to engaging in their chosen careers. This regulation assumes particular pertinence in the field of medicine, in order to protect the public from the potentially deadly effects of incompetence and ignorance. (PRC v. De Guzman, 2004)

XIX. Labor

Section 18. The State affirms labor as a primary social economic force.

It shall protect the rights of workers and promote their welfare.

"A primary social economic force" means that the human factor has primacy over non-human factors of production.

Protection to labor does not indicate promotion of employment alone. Under the welfare and social justice provisions of the Constitution, the promotion of full employment, while desirable, cannot take a backseat to the government's constitutional duty to provide mechanisms for the protection of our workforce, local or overseas. (JMM Promotion and Management v. CA, 260 SCRA 319)

What concerns the Constitution more paramountly is employment be above all, decent, just and humane. It is bad enough that the country has to send its sons and daughters to strange lands, because it cannot satisfy their employment needs at home. Under these circumstances, the Government is duty bound to provide them adequate protection, personally and economically, while away from home. (Philippine Association of Service Exporters v. Drilon, 163 SCRA 386)

XX. Self-Reliant and Independent Economy

Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

This is ***a guide*** for interpreting provisions on national economy and patrimony. Any doubt must be resolved in favor of self-reliance and independence and in favor of Filipinos.

A petrochemical industry is not an ordinary investment opportunity, it is essential to national interest. (The approval of the transfer of the plant from Bataan to Batangas and authorization of the change of feedstock from naptha only to naptha and/or LPG do not prove to be advantageous to the government. This is a repudiation of the **independent** policy of the government to run its own affairs the way it deems best for national interest.) (Garcia v. BOI)

The WTO agreement does not violate Section 19 of Article II, nor Sections 10 and 12 of Article XII, because said sections should be read and understood in relation to Sections 1 and 3, Article XII, which requires the pursuit of a trade policy that "serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity." (Tanada V. Angara)

XXI. Private Sector and Private Enterprise

Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

Section 20 is an acknowledgment of the importance of private initiative in building the nation. However, it is not a call for official abdication of duty to citizenry. (Marine Radio Communications Association v. Reyes)

Although the Constitution enshrines free enterprise as a policy, it nevertheless reserves to the Government the power to intervene whenever necessary for the promotion of the general welfare, as reflected in Sections 6 and 19 of Article XII.

XXII. Comprehensive Rural Development

Section 21. The State shall promote comprehensive rural development and agrarian program.

(See Article XIII, Sections 4-10)

Comprehensive rural development includes not only agrarian reform. It also encompasses a broad spectrum of social, economic, human, cultural, political and even industrial development.

XXIII. Indigenous Cultural Communities

Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

(See Article VI Section 5(2); Article XII, Section 5; Article XIV, Section 17)

XXIV. Independent People's Organizations; Volunteerism

Section 23. The State shall encourage non-governmental, community-bases, or sectoral organizations that promote the welfare of the nation.

(See Article XIII, Sections 15-16)

The provision recognizes the principle that volunteerism and participation of non-governmental organizations in national development should be encouraged.[133]

XXV. Communication and Information

Section 24. The State recognizes the vital role of communication and information in nation-building.

(See Article XVI, Sections 10-11; Article XVIII, Section 23)

The NTC is justified to require PLDT to enter into an interconnection agreement with a cellular mobile telephone system. The order was issued in recognition of the vital role of communications in nation-building and to ensure that all users of the public telecommunications service have access to all other users of service within the Philippines. (PLDT v. NTC)

XXVI. Local Autonomy

Section 25. The State shall ensure the autonomy of local governments.

(See Article X)

Local autonomy under the 1987 Constitution simply means "decentralization" and does not make the local governments sovereign within the State or an imperium in imperio. (Basco v. PAGCOR)

Decentralization of administration is merely a delegation of administrative powers to the local government unit in order to broaden the base of governmental powers. Decentralization of power is abdication by the national government of governmental powers.

Even as we recognize that the Constitution guarantees autonomy to local government units, the exercise of local autonomy remains subject to the power of control by Congress and the power of general supervision by the President. (Judge Dadole v. Commission on Audit, 2002)

XXVII. Equal Access to Opportunities

Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

(See Article VII, Section 13; Article XIII, Sections 1-2)

[133] Bernas Commentary, p 96(2003 ed).

Purpose. The thrust of the provision is to impose on the sate the obligation of guaranteeing equal access to public office.[134]

There is no constitutional right to run for or hold public office. What is recognized is merely a privilege subject to limitations imposed by law. Section 26 of the Constitution neither bestows such right nor elevates the privilege to the level of an enforceable right. (Pamatong v. COMELEC)

XXVIII. Public Service

Section 27. The State shall maintain honesty and integrity in public service and take positive and effective measures against graft and corruption.

(See Article IX-D; Article XI, Sections 4-15)

XXIV. Full Public Disclosure

(1989 and 2000 Bar Question)

Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

(Article III, Section 7; Article VI Sections 12 and 20; Article VII, Section 20; Article XI, Section 17; Article XII, Section 21)

It is well established in jurisprudence that neither the right to information nor the policy of full public disclosure is absolute, there being matters which, albeit of public concern or public interest, are recognized as privileged in nature. (Akbayan v. Aquino, 2008)

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(1996 Bar Question)
A law was passed dividing the Philippines into three regions (Luzon, Visayas and Mindanao) each constituting an independent state except on matters of foreign relations, national defense and national taxation, which are vested in the Central Government. Is the law valid?

The law dividing the Philippines into three regions each constituting an independent state and vesting in a central government matters of foreign relations, national defense and national taxation is unconstitutional.

1. It violates **Article I**, which guarantees the integrity of the national territory of the Philippines because it divided the Philippines into three states.
2. It violates **Section 1, Article II** of the Constitution which provides for the establishment of democratic and republic states by replacing it with three states organized as a confederation.
3. It violates **Section 22, Article II** of the Constitution, which, while recognizing and promoting the rights of indigenous cultural communities, provides for national unity and development.
4. It violates **Section 15, Article X** of the Constitution, which, provides for autonomous regions in Muslim Mindanao and in the cordilleras within the framework of national sovereignty as well as territorial integrity of the Republic of the Philippines.
5. It violates the **sovereignty** of the Republic of the Philippines.

[134] Bernas Commentary, p 99 (2003 ed).

LEGISLATIVE DEPARTMENT

OUTLINE OF ARTICLE VI

I. ***Legislative Power*** *(§1)*
II. Powers of Congress
III. ***Congress*** *(§§ 2-10)*
IV. ***Privileges of Members*** *(§ 11)*
V. ***Duty to Disclose, Disqualifications and Prohibitions*** *(§§ 12-14)*
VI. ***Internal Government of Congress*** *(§§ 15-16)*
VII. ***Electoral Tribunal, CA*** *(§§17-19)*
VIII. ***Records and Books of Accounts*** *(§ 20)*
IX. ***Inquiries/ Oversight function*** *(§§ 21-22)*
X. ***Emergency Powers*** *(§ 23)*
XI. ***Bills/ Legislative Process*** *(§ 24,26,27)*
XII. ***Power of the Purse/Fiscal Powers*** *(§§ 28,29,25)*
XIII. ***Other Prohibited Measures*** *(§§30-31)*
XIV. ***Initiative and Referendum*** *(§ 32)*

I. LEGISLATIVE POWER

Definition of Legislative Power
Where Vested
Classification of Legislative Power
Scope of Legislative power
Limitations on Legislative Power
Non-delegability of Legislative power
Rationale of the Doctrine of Non-delegability
Valid delegation of legislative powers
Delegation of rule-making power
Requisites for a valid delegation of rule-making power
Sufficient Standards
Examples of Invalid of Delegation

> **Section 1.** The Legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

A. Definition of Legislative Power

Legislative power is the authority to make laws and to alter or repeal them.

B. Where Vested

Legislative power is vested in Congress except to the extent reserved to the people by the provision on initiative and referendum.

C. Classification of legislative power

(1) **Original** legislative power- possessed by the sovereign people.
(2) **Derivative** legislative power- that which has been delegated by the sovereign people to the legislative bodies. (Kind of power vested in Congress)
(3) **Constituent**- The power to amend or revise the constitution
(4) **Ordinary**- Power to pass ordinary laws.

Legislative power exercised by the people. The people, through the amendatory process, exercise constituent power, and through initiative and referendum, ordinary legislative power.

D. Scope of Legislative power.

Congress may legislate on any subject matter. (Vera v. Avelino) In other words, the legislative power of Congress is **plenary**.

E. Limitations on legislative power:

1. Substantive limitations[135]
2. Procedural limitations[136]

1. Substantive limitations:

a. ***Express Limitations***
   i. Bill of Rights[137]
   ii. On Appropriations[138]
   iii. On Taxation[139]

[135] Refer to the subject matter of legislation. These are limitations on the content of laws.

[136] Formal limitations refer to the procedural requirements to be complied with by Congress in the passage of the bills. (Sinco, Phil. Political Law)

[137] Bill of Rights
- No law shall be passed abridging freedom of speech, of expression etc (art. 3 §4)
- No law shall be made respecting an establishment of religion (art. 3 §5)
- No law impairing the obligation of contracts shall be passed. (art 3 §10)
- No ex post facto law or bill of attainder shall be enacted. (art. 3 §22)

[138] On Appropriations
- Congress cannot increase appropriations by the President (art. 6 §25)
- (art. 6 29(2)

[139] On Taxation
- (art. 6 §28 and 29(3))

iv. On Constitutional Appellate jurisdiction of SC[140]
v. No law granting a title of royalty or nobility shall be enacted (art. 6 §31)

b. Implied limitations

i. Congress cannot legislate irrepealable laws
ii. Congress cannot delegate legislative powers
iii. Non-encroachment on powers of other departments

2. Procedural limitations:

a. Only one subject
b. Three readings on separate days
c. Printed copies in its final form 3 days before passage of the bill. (art 6 § 26)

F. Non-delegability of Legislative power

Doctrine of Non-delegation of legislative powers: The rule is *delegata potestas non potest delagari*-what has been delegated cannot be delegated. The doctrine rests on the ethical principle that a delegated power constitutes not only a right but duty to be performed by the delegate by the instrumentality of his own judgment and not through the intervening mind of another.

G. Rationale of the Doctrine of Non-delegability:

(1) Based on the **separation of powers**. (Why go to the trouble of separating the three powers of government if they can straightaway remerge on their own notion?)
(2) Based on **due process of law**. Such precludes the transfer of regulatory functions to private persons.
(3) And, based on the maxim, "**degelata potestas non potest delegari**" meaning what has been delegated already cannot be further delegated.

H. Valid delegation of legislative powers

General Rule: Legislative power cannot be delegated
Exceptions:

(1) Delegation of tariff power to the President
(2) Delegation of emergency powers to the President
(3) Delegation to LGU's

Note:

- (art. 14 §4(3))

[140] No law shall be passed increasing the appellate jurisdiction of the SC without its advice and concurrence (art. 6 §30)

Some commentators include (a) delegation to the people at large and (b) delegation to administrative bodies to the exceptions.(*See* Cruz, Philippine Political Law p 87, 1995 ed.) However, I submit this is not accurate.

I submit that legislative power is not delegated to the people because in the first place they are the primary holder of the power; they only delegated such power to the Congress through the Constitution. (*See Preamble and Article II Section 1*) Note that Article VI Section 1 does not delegate power to the people. It ***reserves*** legislative power to the people. -asm

What is delegated to administrative bodies is not legislative power but rule-making power or law execution.

I. Delegation of rule-making powers

What is delegated to administrative bodies is not legislative power but rule-making power or law execution. Administrative agencies may be allowed either to:

- Fill up the details on otherwise complete statue or
- Ascertain the facts necessary to bring a "contingent" law or provision into actual operation.

Power of Subordinate Legislation. It is the authority of the administrative body tasked by the legislature to implement laws to promulgate rules and regulations to properly execute and implement laws.

Contingent Legislation
The standby authority given to the President to increase the value added tax rate in the VAT Law, R.A. 9337 was upheld as an example of contingent legislation where the effectivity of the law is made to depend on the verification by the executive of the existence of certain conditions.[141]

In Gerochi v. DENR[142] the power delegated to the Energy Regulator Board to fix and impose a universal charge on electricity end-users was challenged as an undue delegation of the power to tax. The Court said that, since the purpose of the law was not revenue generation but energy regulation, the power involved was more police power than the power to tax. Moreover the Court added that the power to tax can be used for regulation. As to the validity of the delegation to an executive agency, the Court was satisfied that the delegating law was complete in itself and the amount to be charged was made certain by the parameters set by the law itself.

[141] *Abakada Guru Party List Officers v. Executive Secretary,* G.R. 168056, September 1, 2005. Reconsidered October 18, 2005.
[142] G.R. No. 159796, July 17, 2007

J. Requisites for a valid delegation of rule-making power or execution: (2005 Bar Question)

(1) The delegating law must be **complete in itself** – it must set therein the policy to be carried out or implemented by the delegate.

(2) The delegating law must fix a **sufficient standard**- the limits of which are sufficiently determinate or determinable, to which the delegate must conform in the performance of his functions.

Importance of Policy. Without a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law.

Importance of Standard. Without standard, there would be no means to determine with reasonable certainty whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power, not only to make law, but also to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress. (Pelaez v. Auditor General)

K. Standards

1. Need not be explicit
2. May be found in various parts of the statute
3. May be embodied in other statutes of the same statute

1. A legislative standard **need not be explicit** or formulated in precise declaratory language. It can be drawn from the declared policy of the law and from the totality of the delegating statute. (Osmena v. Orbos) It can be implied from the policy and purpose of the law (Agustin v. Edu)

2. A legislative standard may **be found in various parts of the statute**. (Tablarin v. Guttierez)

3. A legislative standard need not be found in the law challenged and **may be embodied in other statues on the same subject**. (Chiongbayan v Orbos)

Q: Petitioners questioned the grant of the powers to mayors to issue permits for public assemblies in the Public Assembly Act on the ground that it constituted an undue delegation of legislative power. There is however a reference to "imminent and grave danger of a substantive evil: in Section 6(c). Decide.
A: The law provides a precise and sufficient standard, the clear and present danger test in Section 6(a). The reference to imminent and grave danger of a substantive evil in Section 6(c) substantially means the same. (Bayan v. Ermita)

4. Examples of sufficient standards

- "Necessary or advisable in the public interest" as a standard. Public interest in this case is sufficient standard pertaining to the issuance or cancellation of certificates or permits. And the term "public interest' is not without a settled meaning. (People vs. Rosenthal)
- "Necessary in the interest of law and order" as a standard. An exception to the general rule, sanctioned by immemorial practice, permits the central legislative body to delegate legislative powers to local authorities. (Rubi vs. Provincial Board of Mindoro)
- "To promote simplicity, economy and efficiency" as a standard. (Cervantes vs. Auditor General)
- "Of a moral, educational, or amusing and harmless character" as a standard. (Mutual Film Co. vs. Industrial Commission of Ohio)
- "To maintain monetary stability promote a rising level of production, employment and real income" as a standard. (People vs. Jollife)
- "Adequate and efficient instruction" as standard. (Philippine Association of Colleges and Universities vs. Sec. of Education.
- "Justice and equity and substantial merits of the case" as a standard. The discretionary power thus conferred is judicial in character and does not infringe upon the principle of separation of powers the prohibition against the delegation of legislative function (International Hardwood and Veneer Co. vs. Pangil Federation of Labor)
- "Fair and equitable employment practices" as a standard. The power of the POEA in requiring the model contract is not unlimited as there is a sufficient standard guiding the delegate in the exercise of the said authority. (Eastern Shipping Lines Inc. vs. POEA)
- "As far as practicable", "decline of crude oil prices in the world market" and "stability of the peso exchange rate to the US dollar" as standards. The dictionary meanings of these words are well settled and cannot confuse men of reasonable intelligence. (However, by considering another factor to hasten full deregulation, the Executive Department rewrote the standards set forth in the statute. The Executive is bereft of any right to alter either by subtraction or addition the standards set in the statute.) (Tatad vs. Sec of Energy)

L. Examples of invalid delegation

- Where there is no standard that the officials must observe in determining to whom to distribute the confiscated carabaos and carabeef, there is thus an invalid delegation of legislative power. (Ynot v. IAC)
- Where a provision provides that the penalty would be a fine or 100 pesos OR imprisonment in the discretion of the court without prescribing the minimum and maximum periods of imprisonment, a penalty imposed based thereon is unconstitutional. It is not for the courts to fix the term of imprisonment where no points of reference have been provided by the legislature. (People v. Dacuycuy)

- Where the statute leaves to the sole discretion of the Governor-General to say what was and what was not "any cause" for enforcing it, the same is an invalid delegation of power. The Governor-General cannot by proclamation, determine what act shall constitute a crime or not. That is essentially a legislative task. (US vs. Ang Tang)
- Where a statute requires every public utility "to furnish annually a detailed report of finances and operations in such form and containing such matter as the Board may, from time to time, by order, prescribe", it seems that the legislature simply authorized the Board to require what information the Board wants. Such constitutes an unconstitutional delegation of legislative power. (Compana General de Tabacos de Filipinas vs. Board of Public Utility Commissioners)
- Where the legislature has not made the operation (execution) of a statute contingent upon specified facts or conditions to be ascertained by the provincial board but in reality leaves the entire matter for the various provincial boards to determine, such constitute an unconstitutional delegation of legislative power. A law may not be suspended as to certain individuals only, leaving the law to be enjoyed by others. (People vs. Vera)
- The authority to CREATE municipal corporations is essentially legislative in nature.

II. POWERS OF CONGRESS

A. Inherent Powers
B. Express Powers

A. INHERENT POWERS

(1) Police power
(2) Power of eminent domain
(3) Power of taxation
(4)Implied Powers (Contempt Power)[143]

B. EXPRESS POWERS

(1) Legislative Power (art 6 sec1)
  (a) Ordinary- power to pass ordinary laws
  (b) Constituent[144]- power to amend and or revise the Constitution
(2) Power of the Purse[145] (art. 6§25)
(3) Power of Taxation (art. 6 §28(3), art. 14 §4(3), art 6, §29(4))
(4) Investigatory Power (art. 6 §21)
(5) Oversight function (art. 6 §22)
(6) Power to declare the existence of state of war (art. 6 §23(1))
(7) Power to act as Board of Canvassers in election of President[146] (art 7 §4)
(8) Power to call a special election for President and Vice-President. (art. 7 §10)
(9) Power to judge President's physical fitness to discharge the functions of the Presidency (art. 7§11)
(10) Power to revoke or extend suspension of the privilege of the writ of habeas corpus or declaration of martial law. (art. 7 §18)
(11) Power to concur in Presidential amnesties. Concurrence of majority of all the members of Congress. (art.7 §19)
(12) Power to concur in treaties or international agreements. Concurrence of at least 2/3 of all the members of the Senate.(art.7 §21)
(13) Power to confirm certain appointments/nominations made by the President (art.7 §9, art.7§16)
(14) Power of Impeachment (art.11§2)
(15) Power relative to natural resources[147] (art. 12 §2)
(16) Power of internal organization
  Election of officers
  Promulgate internal rules
  Disciplinary powers (art.6 §16)

Note: Members of Congress have immunity from arrest and parliamentary immunity.[148] (art 6 §§11&12)

III. Congress

Composition of Congress
Bicameralism v. Unicameralism
Composition of Senate
Qualification of Senators
Senators' Term of Office / Staggering of Terms
Composition of HR
Qualification of Members of HR
Domicile
Property Qualification
Term of Office of Representatives
Party-List System
Legislative Districts
Election
Salaries

A. Composition of Congress

The Congress of the Philippines which shall consist of a Senate and a House of Representatives. (art 6 §1)

[143] Page 12 of 2008 UP Bar Ops Reviewer.
[144] Propose amendment to or revision of the Constitution (art 17 §1)Call for a constitutional convention (art 17 §3)
[145] No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. (art 6 §29(1)) The form, content, and manner of preparation of budget shall be prescribed by law. (art 6 §25)
[146] This function is non-legislative. (Pimentel v. Joint Committee on Congress. June 22, 2004)
[147] Antonio B. Nachura, Outline/Reviewer in Political Law (2006 ed.)
[148] Privilege from attest is not given to Congress as a body, but rather one that is granted particularly to each individual member of it. (Coffin v. Coffin, 4 Mass 1)

B. Bicameralism v. Unicameralism

The Congress of the Philippines is a **bicameral body** composed of a Senate and House of Representatives, the first being considered as the upper house and the second the lower house.

Advantages of Unicameralism.

1. Simplicity of organization resulting in economy and efficiency
2. Facility in pinpointing responsibility for legislation
3. Avoidance of duplication.

Advantages of Bicameralism.

1. Allows for a body with a national perspective to check the parochial tendency of representatives elected by district.
2. Allows for more careful study of legislation
3. Makes the legislature less susceptible to control by executive
4. Serves as training ground for national leaders.[149]

C. Composition of Senate

> **Section 2.** The Senate shall be composed of twenty-four senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.

Elected at large, reason. By providing for a membership elected at large by the electorate, this rule intends to make the Senate a training ground for national leaders and possibly a springboard for the Presidency. The feeling is that the senator, having national rather than only a district constituency, will have a broader outlook of the problems of the country instead of being restricted by parochial viewpoints and narrow interests. With such a perspective, the Senate is likely to be more circumspect and broad minded than the House of Representatives.[150]

D. Qualifications of a Senator

> **Section 3.** No person shall be a senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of election.

Qualifications of a senator

(1) Natural-born citizen of the Philippines
(2) At least 35 years of age on the day of the election
(3) Able to read and write
(4) Registered voter
(5) Resident of the Philippines for not less than 2 years immediately preceding the day of election.

"On the day of the election" means on the day the votes are cast. (Bernas Primer)

E. Senators' Term of Office

Term
Commencement of Term
Limitation
Effect of Voluntary Renunciation
Staggering of Terms
Reason for Staggering

> **Section 4.** The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.
> No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

1. Term. The term of office of the Senators shall be 6 years.

2. Commencement of term. The term of office of the Senators shall commence on 12:00 noon of June 30 next following their election. (unless otherwise provided by law)

3. Limitation. A Senator may not serve for more than two ***consecutive*** terms. However, they may serve for more than two terms provided that the terms are not consecutive.

4. Effect of Voluntary Renunciation. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (art. 6 § 4)

5. Staggering of Terms. The Senate shall not at any time be completely dissolved. One-half of the membership is retained as the other half is replaced or reelected every three years.

[149] Bernas, Primer p 224, 2006 ed.
[150] Cruz, Phlippine Political Law.

6. Reason for Staggering. The continuity of the life of the Senate is intended to encourage the maintenance of Senate policies as well as guarantee that there will be experienced members who can help and train newcomers in the discharge of their duties.[151]

F. Composition of House of Representatives

> **Section 5.** (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

Composition. The composition of the House of Representatives shall be composed of not more than 250 members unless otherwise fixed by law.

Representatives shall be elected from legislative districts and through party-list system.

a) District representatives
b) Party-list representatives
c) Sectoral representatives (these existed only until 1998)

G. Qualification of Representatives

> **Section 6.** No person shall be a member of the House of Representatives unless he is a natural born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Qualifications of District Representatives:
(1) Natural-born citizen of the Philippines
(2) At least 25 years of age on the day of the election
(3) Able to read and write
(4) A registered voter in the district in which he shall be elected
(5) A resident of the district in which he shall be elected for a period not less than 1 year immediately preceding the day of the election.

H. Domicile

Domicile
Residence as a qualification means "domicile". Normally a person's domicile is his domicile of origin.

If a person never loses his or her domicile, the one year requirement of Section 6 is not of relevance because he or she is deemed never to have left the place. (Romualdez-Marcos v. COMELEC)

A person may lose her domicile by voluntary abandonment for a new one or by marriage to a husband (who under the Civil Code dictates the wife's domicile).

Change of domicile
To successfully effect a change of domicile, there must be:

- ***Physical Presence***-Residence or bodily presence in the new locality (The change of residence must be voluntary)
- ***Animus manendi*** -Intention to remain in the new locality (The purpose to remain in or at the domicile of choice must be for an indefinite period of time)
- ***Animus non revertendi***-Intention to abandon old domicile

A lease contract does not adequately support a change of domicile. The lease does not constitute a clear animus manendi. (Domino v. COMELEC) However a lease contract coupled with affidavit of the owner where a person lives, his marriage certificate, birth certificate of his daughter and various letter may prove that a person has changed his residence. (Perez v. COMELEC)

I. Property Qualification

Property qualifications are contrary to the social justice provision of the Constitution. Such will also be adding qualifications provided by the Constitution.

J. Term of Office of Representatives

> **Section 7.** The members of the House of Representatives shall be

[151] Cruz, Philippine Political Law.

elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.
No member of the House Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Term v. Tenure. Term refers to the period during which an official is entitled to hold office. Tenure refers to the period during which the official actually holds the office.

The term of office of Representatives shall be 3 years. The term of office of Representatives shall commence on 12:00noon of June 30 next following their election. (unless otherwise provided by law)

A Representative may not serve for more than 3 *consecutive* terms. However, he may serve for more than 3 terms provided that the terms are not consecutive. (1996 Bar Question)

Why three years? One purpose in reducing the term for three years is to synchronize elections, which in the case of the Senate are held at three-year intervals (to elect one-half of the body) and in the case of the President and Vice-President every six years.[152]

Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Abandonment of *Dimaporo*. The case of *Dimaporo v. Mitra* which held that "filing of COC for a different position is a voluntary renunciation" has been abandoned because of the Fair Elections Act.

Farinas case. The ruling case now is *Farinas v. Executive Secretary* which held that "filing of COC is not constitutive of voluntary renunciation for elected officials."

K. Party List System

Party-list system
Party-list Representatives
Guidelines
Parties or organizations disqualified
Qualifications of a party-list nominee

Section 5.

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as may be provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

1. Party-list System. (RA 7941) The party-list system is a mechanism of proportional representation in the election of representatives of the House of Representatives from national, regional, and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections.

Reason for party-list system. It is hoped that the system will democratize political power by encouraging the growth of a multi-party system.

2. Party-list representatives
Ceiling. "The party-list representatives shall constitute 20% of the total number of representatives." Section 5(2) of Article VI is not mandatory. It merely provides a ceiling for party-list seats in Congress. (Veterans Federation Party v. COMELEC)

The 2% threshold requirement and the 3 seat-limit provided in RA 7941 are valid. Congress was vested with broad power to define and prescribe the mechanics of the party-list system of representation. Congress wanted to ensure that only those parties, organizations and coalitions having sufficient number of constituents deserving of representation are actually represented in Congress. (Veterans Federation Party v. COMELEC)

Computation
The Court reiterated that "the prevailing formula for the computation of additional seats for party-list winners is the formula stated in the landmark case of *Veterans*." **CIBAC v COMELEC**, G.R. No. 172103 (2007)

No. of votes of concerned party / **xfirst party** = **No. of additional seats allocated to the** concerned party

[152] Cruz, Philippine Political law.

No. of votes of first party

3. Guidelines on what organizations may apply in the party-list system:

(1) The parties or organizations must represent the marginalized and underrepresented in Section 5 of RA 7941;
(2) Political parties who wish to participate must comply with this policy;
(3) The religious sector may not be represented;
(4) The party or organization must not be disqualified under Section 6 of RA 7941;
(5) The party or organization must not be an adjunct of or a project organized or an entity funded or assisted by the government;
(6) Its nominees must likewise comply with the requirements of the law;
(7) The nominee must likewise be able to contribute to the formulation and enactment of legislation that will benefit the nation. (Ang Bagong Bayani v. COMELEC, June 26, 2001)

4. Parties or organizations disqualified

The COMELEC may motu propio or upon verified complaint of any interested party, remove or cancel after due notice and hearing the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

1. t is a religious sect or denomination, organization or association organized for religious purposes;
2. It advocates violence or unlawful means to seek its goal;
3. It is a foreign party or organization;
4. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
5. It violates or fails to comply with laws, rules or regulations relating to elections.
6. It declares untruthful statements in its petition;
7. It has ceased to exist for at least one (1) year;
8. It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

5. Qualifications of a party-list nominee in RA 7941:

(1) Natural-born citizen of the Philippines;
(2) Registered Voter;
(3) Resident of the Philippines for a period of not less than 1 year immediately preceding the day of election
(4) Able to read and write
(5) A bona fide member of the party or organization which he seeks to represent for at least 90 days preceding the day of election
(6) At least 25 years of age. (Ang Bagong Bayani v. COMELEC)

Political Parties. Political parties may participate in the party-list system (as long as they comply with the guidelines in Section 5 of RA 7941.) (Ang Bagong Bayani v. COMELEC)

Section 10 of RA 7941 provides that the votes cast for a party which is not entitled to be voted for the party-list system should not be counted. The votes they obtained should be deducted from the canvass of the total number of votes cast for the party-list system. (Ang Bagong Bayani v. COMELEC)

Religious sectors v. Religious leaders. There is a prohibition of religious sectors. However, there is no prohibition from being elected or selected as sectoral representatives.

L. Legislative Districts

Apportionment
Reason for the Rule
Reapportionment
Gerrymandering

> Section 5
> (3) Each legislative district shall comprise, as far aspracticable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.
> (4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

1. Apportionment

Legislative districts are apportioned among the provinces, cities, and the Metropolitan Manila area.

Legislative districts are apportioned in accordance with the number of their respect inhabitants and on the basis of a uniform and progressive ratio. (art. 6 § 5)

Each city with a population of at least 250,000 shall have at least one representative.

Each province shall have at least one representative.

The question of the validity of an apportionment law is a justiciable question. (Macias v. Comelec)

2. Reason for the rule. The underlying principle behind the rule for apportionment (that representative districts are apportioned among provinces, cities, and municipalities *in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ration.")* is the **concept of equality of representation** which is a basic principle of republicanism. One man's vote should carry as much weight as the vote of every other man.

Section 5 provides that the House shall be composed of not more than 250 members unless otherwise provided by law. Thus, Congress itself may by law increase the composition of the HR. (Tobias v. Abalos)

When one of the municipalities of a congressional district is converted to a city large enough to entitle it to one legislative district, the incidental effect is the splitting of district into two. The incidental arising of a new district in this manner need not be preceded by a census. (Tobias v. Abalos)

3. Reapportionment
Reapportionment can be made thru a special law. (Mariano v. COMELEC)

Correction of imbalance as a result of the increase in number of legislative districts must await the enactment of reapportionment law. (Montejo v. COMELEC)

4. Gerrymandering
Gerrymandering is the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party.

Gerrymandering is not allowed. The Constitution provides that each district shall comprise, as far as practicable, contiguous, compact and adjacent territory.

M. Election

1. Regular Election
2. Special Election

> **Section 8.** Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May.

Regular election
A person holding office in the House must yield his or her seat to the person declared by the COMELEC to be the winner. The Speaker shall administer the oath to the winner. (Codilla v. De Venecia)

Disqualified "winner"
The Court has also clarified the rule on who should assume the position should the candidate who received the highest number of votes is disqualified. The second in rank does not take his place. The reason is simple: "It is of no moment that there is only a margin of 768 votes between protestant and protestee. Whether the margin is ten or ten thousand, it still remains that protestant did not receive the mandate of the majority during the elections. Thus, to proclaim him as the duly elected representative in the stead of protestee would be anathema to the most basic precepts of republicanism and democracy as enshrined within our Constitution."[153]

> **Section 9.** In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

Special election
A special election to fill in a vacancy is not mandatory.

In a special election to fill a vacancy, the rule is that a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections, fixes the date at which the special election is to be held and operates as the call for that election. Consequently, an election held at the time thus prescribed is not invalidated by the fact that the body charged by law with the duty of calling the election failed to do so. This is because the right and duty to hold the election emanate from the statue and not from any call for election by some authority and the law thus charges voters with knowledge of the time and place of the election. (Tolentino v. COMELEC)

Special Election (R.A. 6645)
1. No special election will be called if vacancy occurs:
   a. at least eighteen (18) months before the next regular election for the members of the Senate;
   b. at least one (1) year before the next regular election members of Congress
2. The particular House of Congress where vacancy occurs must pass either a resolution if Congress is in session or the Senate President

[153] *Ocampo v. HRET,* G.R. No. 158466. June 15, 2004.

or the Speaker must sign a certification, if Congress is not in session,
   a. declaring the existence of vacancy;
   b. calling for a special election to be held within 45 to 90 days from the date of the resolution or certification.
3. The Senator or representative elected shall serve only for the unexpired term.

N. Salaries

When increase may take effect
Reason fro the delayed effect of increased salary
Emoluments
Allowances

> **Section 10.** The salaries of Senators and Members of the House of Representatives shall be determined by law. No increase in said compensation shall take effect until after the expiration of the full term of all the members of the Senate and the House of Representatives approving such increase.

1. When increase may take effect. No increase in the salaries of Senators and Representatives shall take effect until after the expiration of the full term of **all** the members of the Senate and House of Representatives.

2. Reason for the delayed effect of increased salary. Its purpose is to place a "legal bar to the legislators' yielding to the natural temptation to increase their salaries. (PHILCONSA v. Mathay)

3. Emoluments. Bernas submits that, by appealing to the spirit of the prohibition, the provision may be read as an absolute ban on any form of direct or indirect increase of salary (like emoluments).

4. Allowances. A member of the Congress may receive office and necessary travel allowances since allowances take effect immediately. Nor is there a legal limit on the amount that may be appropriated. The only limit is moral, because, according to Section 20, the books of Congress are audited by the Commission on Audit 'which shall publish annually an itemized list of amounts paid and expenses incurred for each Member.[154]

IV. PRIVILEGES OF MEMBERS

A. Privilege from Arrest
B. Parliamentary freedom of speech and debate

> **Section 11.** A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.

A. Privilege from Arrest (Parliamentary Immunity of Arrest)

Privilege
Purpose
Scope
Limitations
Privilege is Personal
Trillanes Case

1. Privilege. A member of Congress is privileged from arrest **while Congress is in session** in **all offenses** (criminal or civil) not punishable by more than 6 years imprisonment.

2. Purpose. Privilege is intended to ensure representation of the constituents of the member of Congress by preventing attempts to keep him from attending sessions.[155]

3. Scope. Parliamentary immunity only includes the immunity from arrest, and not of being filed suit.

4. Limitations on Parliamentary Immunity
1. Crime has a maximum penalty of not more than 6 years;
2. Congress is in session, whether regular or special;
3. Prosecution will continue independent of arrest;
4. Will be subject to arrest immediately when Congress adjourns.

While in session. The privilege is available "while the Congress is in session," whether regular or special and whether or not the legislator is actually attending a session. "Session" as here used does not refer to the day-to-day meetings of the legislature but to the entire period from its initial convening until its final adjournment.[156] Hence the privilege is not available while Congress is in recess.

Why not available during recess. Since the purpose of the privilege is to protect the legislator against harassment which will keep him away from legislative sessions, there is no point in extending the privilege to the period when the Congress is not in session.

[154] Bernas Commentary, p700.

[155] Cruz, Philippine Political Law.

[156] Cruz, Philippine Political Law.

5. Privilege is personal. Privilege is personal to each member of the legislature, and in order that its benefits may be availed of, it must be asserted at the proper time and place; otherwise it will be considered waived.[157]

Privilege not granted to Congress but to its members. Privilege from arrest is not given to Congress as a body, but rather one that is granted particularly to each individual member of it. (Coffin v. Coffin, 4 Mass 1)[158]

Privilege is reinforced by Article 145 of the Revised Penal Code-*Violation of Parliamentary Immunity*.

Note: The provision says **privilege from arrest**; it does not say privilege from detention.

> Q: Congressman Jalosjos was convicted for rape and detained in prison, asks that he be allowed to attend sessions of the House.
> A: Members of Congress are not exempt from detention for crime. They may be arrested, even when the House in session, for crimes punishable by a penalty of more than six months.
>
> Q: Congressman X was convicted for a crime with a punishment of less than 6 years. He asks that he be allowed to attend sessions of the House contending that the punishment for the crime for which he was convicted is less than 6 years.
> A: I submit that Congressman X can be detained even if the punishment imposed is less than 6 years. The provision only speaks of privilege from arrest. It does not speak of exemption from serving sentence after conviction. Members of Congress are not exempt from detention for crime.-asm
>
> Q: Can the Sandiganbayan order the preventive suspension of a Member of the House of Representatives being prosecuted criminally for violation of the Anti-Graft and Corrupt Practices Act?
>
> A: Yes. In *Paredes v. Sandiganbayan*, the Court held that the accused cannot validly argue that only his peers in the House of Representatives can suspend him because the court-ordered suspension is a preventive measure that is different and distinct from the suspension ordered by his peers for disorderly behavior which is a penalty.

6. Trillanes Case (June 27, 2008)

In a unanimous decision penned by Justice Carpio Morales, the SC en banc junked Senator Antonio Trillanes' petition seeking that he be allowed to perform his duties as a Senator while still under detention. SC barred Trillanes from attending Senate hearings while has pending cases, affirming the decision of Makati Judge Oscar Pimentel.

The SC reminded Trillanes that "election to office does not obliterate a criminal charge", and that his electoral victory only signifies that when voters elected him, they were already fully aware of his limitations.

The SC did not find merit in Trillanes' position that his case is different from former representative Romeo Jalosjos, who also sought similar privileges before when he served as Zamboanga del Norte congressman even while in detention.

Quoting parts of the decision on Jalosjos, SC said that "allowing accused-appellant to attend congressional sessions and committee meetings five days or more a week will virtually make him a free man… Such an aberrant situation not only elevates accused appellant's status to that of a special class, it would be a mockery of the purposes of the correction system."

The SC also did not buy Trillanes' argument that he be given the same liberal treatment accorded to certain detention prisoners charged with non-bailable offenses, like former President Joseph Estrada and former Autonomous Region in Muslim Mindanao (ARMM) governor Nur Misuari, saying these emergency or temporary leaves are under the discretion of the authorities or the courts handling them.

The SC reminded Trillanes that he also benefited from these "temporary leaves" given by the courts when he was allowed to file his candidacy and attend his oath-taking as a senator before.

The SC also believes that there is a "slight risk" that Trillanes would escape once he is given the privileges he is asking, citing the Peninsula Manila incident last November.

B. Privilege of Speech and Debate

Requirements
Purpose
Scope
Privilege Not Absolute

> ***1. Isagani Cruz*: 2 Requirements for the privilege to be availed of:**
> 1. That the remarks must be made while the legislature or the legislative committee is functioning, that is in session;[159] *(See* Jimenez v. Cabangbang)
> 2. That they must be made in connection with the discharge of official duties.[160]
>
> **But wait!** As regards Requirement #1 provided by Cruz, Bernas Primer provides: to come under the privilege, it is not essential that the Congress be in session when the utterance is made. What is essential is that the utterance must constitute "legislative action."[161]
>
> Libelous remarks not in exercise of legislative function shall not be under privilege of speech.

[157] Sinco, Philippine Political Law, p. 187, 10th ed.
[158] Sinco, Philippine Political Law, p. 187, 10th ed.
[159] Cruz, Philippine Political Law p. 116 (1995 ed.); *See* **Jimenez v. Cabangbang.**
[160] Cruz, Philippine Political Law p. 116 (1995 ed.).
[161] Bernas Primer, p. 245 (2006 ed.)

To invoke the privilege of speech, the matter must be oral and must be proven to be indeed privileged.

2. Purpose. It is intended to leave legislator unimpeded in the performance of his duties and free form harassment outside.[162]

Privilege of speech and debate enables the legislator to express views bearing upon the public interest without fear of accountability outside the halls of the legislature for his inability to support his statements with the usual evidence required in the court of justice. In other words, he is given more leeway than the ordinary citizen in the ventilation of matters that ought to be divulged for the public good.[163]

3. Scope:[164]

(1) The privilege is a protection only against forums other than the Congress itself. (Osmena v. Pendatun)

(2) "Speech or debate" includes utterances made in the performance of official functions, such as speeches delivered, statements made, votes cast, as well as bills introduced and other acts done in the performance of official duties. (Jimenez v. Cabangbang)

(3) To come under the privilege, it is not essential that the Congress be in session when the utterance is made. What is essential is that the utterance must constitute "**legislative action**", that is, it must be part of the deliberative and communicative process by which legislators participate in committee or congressional proceedings in the consideration of proposed legislation or of other matters which the Constitution has placed within the jurisdiction of Congress. (Gravel v. US)

(4) The privilege extends to agents of assemblymen provided that the "agency" consists precisely in assisting the legislator in the performance of "legislative action" (Gravel v. US)

4. Privilege not absolute. The rule provides that the legislator may not be questioned "in any *other* place," which means that he may be called to account for his remarks by his own colleagues in the Congress itself and, when warranted, punished for "disorderly behavior."[165]

V. DUTY TO DISCLOSE; PROHIBITIONS

A. Duty to Disclose

[162] Bernas Primer, p. 245 (2006).
[163] Cruz, Philippine Political Law.
[164] Bernas Primer, p. 245 (2006 ed.)
[165] Cruz, Philippine Political Law; *See* Osmena v. Pendatun.

B. Prohibitions

A. Duty to disclose

> **Section 12.** All members of the Senate and the House of Representative shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

This provision speaks of duty to disclose the following:

(1) **Financial and business interest** *upon assumption of office*

(2) **Potential conflict of interest** that may arise from filing of a *proposed legislation of which they are authors***.**

B. Prohibitions (Disqualifications and Inhibitions)

Prohibitions
Disqualifications
Prohibitions on lawyer-legislators
Conflict of interests

Disqualifications

> **Section 13.** No Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

> **Section 14.** No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or

> instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

1. Prohibitions:

Disqualifications

(1) **To hold any other office or employment** in the government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries **during his term** without forfeiting his seat. (Incompatible office)

(2) **To be appointed to any office** which may have been created or the emoluments thereof increased during the term for which he was elected. (Forbidden office)

Prohibitions on lawyer-legislators

(3) **To personally appear as counsel** before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies.

Conflict of Interests

(4) **To be interested financially**, directly or indirectly, in any **contract** with, or in any **franchise** or special **privilege** granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, **during his term of office**.

(5) **To intervene in any matter** before any office of the Government **for his pecuniary benefit** or **intervene in any matter** before any office of the Government where he may be called upon to act on account of his office.

(6) See Section 10

2. *Disqualifications*

Incompatible Office

Purpose. The purpose of prohibition of incompatible offices is to prevent him from owing loyalty to another branch of the government, to the detriment of the independence of the legislature and the doctrine of separation of powers.

2 Kinds of Office under Article 13

1) Incompatible office (1st sentence of article 13)
2) Forbidden office (2nd sentence of article 13)

Prohibition not absolute. The prohibition against the holding of an incompatible office is not absolute; what is not allowed is the simultaneous holding of that office and the seat in Congress.[166] Hence, a member of Congress may resign in order to accept an appointment in the government before the expiration of his term.[167]

When office not incompatible. Not every other office or employment is to be regarded as incompatible with the legislative position. For, example, membership in the Electroral Tribunals is permitted by the Constitution itself. Moreover, if it can be shown that the second office is an extension of the legislative position or is in aid of legislative duties, the holding thereof will not result in the loss of the legislator's seat in the Congress.[168]

Forbidden Office.

Purpose. The purpose is to prevent trafficking in public office.[169] The reasons for excluding persons from office who have been concerned in creating them or increasing the emoluments are to take away as far as possible, any improper bias in the vote of the representative and to secure to the constituents some solemn pledge of his disinterestedness.[170]

Scope of prohibition. The provision does not apply to elective offices, which are filled by the voters themselves.

The appointment of the member of the Congress to the forbidden office is not allowed **only** during the term for which he was elected, when such office was created or its emoluments were increased. After such term, and even if the legislator is re-elected, the disqualification no longer applies and he may therefore be appointed to the office.[171]

3. *Prohibition on lawyer legislators***.**

Purpose. The purpose is to prevent the legislator from exerting undue influence, deliberately or not, upon the body where he is appearing.[172]

Not a genuine party to a case. A congressman may not buy a nominal account of shares in a corporation which is party to a suit before the SEC and then appear in "intervention". That which the

[166] Cruz, Philippine Political Law.
[167] Bernas Primer, p.246 (2006).
[168] Cruz, Philippine Political Law.
[169] Cruz, Philippine Political Law.
[170] Mr. Justice Story quoted in Sinco, Philippine Political Law, p. 163 (1954).
[171] Cruz, Philippine Political Law.
[172] Cruz, Philippine Political Law.

Constitution directly prohibits may not be done by indirection. (Puyat v. De Guzman)

Prohibition is personal. It does not apply to law firm where a lawyer-Congressman may be a member.[173] The lawyer-legislator may still engage in the practice of his profession except that when it come to trials and hearings before the bodies above-mentioned, appearance may be made not by him but by some member of his law office.[174]

Pleadings. A congressman cannot sign pleadings [as counsel for a client] (Villegas case)

4. *Conflict of Interests*

Financial Interest
Purpose. This is because of the influence they can easily exercise in obtaining these concessions. The idea is to prevent abuses from being committed by the members of Congress to the prejudice of the public welfare and particularly of legitimate contractors with the government who otherwise might be placed at a disadvantageous position *vis-à-vis* the legislator.

Contract. The contracts referred to here are those involving "financial interest," that is, contracts from which the legislator expects to derive some profit at the expense of the government.[175]

Pecuniary Benefit. The prohibited pecuniary benefit could be direct or indirect and this would cover pecuniary benefit for relatives. (Bernas Commentary, p. 710, 10th ed.)

VI. INTERNAL GOVERNMENT OF CONGRESS

Sessions
Adjournment
Officers
Quorum
Internal Rules
Disciplinary Powers
Legislative Journal and Congressional Record
Enrolled Bill Doctrine

A. Sessions

1. Regular
2. Special
3. Joint Sessions

> **Section 15.** The Congress shall convene once every year on the fourth Monday of July for its regular session, unless a different date is fixed by law, and shall continue to be in session for such number of days as it may determine until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays. The President may call a special session at any time.

Regular session
Congress shall convene once every year for its regular session.

Congress shall convene on the 4th Monday of July (unless a different date is fixed by law) until 30 days (exclusive of Saturdays, Sundays and legal holidays) before the opening of the next regular session.

Special session
A special session is one called by the President while the legislature is in recess.

Mandatory recess. A mandatory recess is prescribed for the thirty-day period before the opening of the next regular session, excluding Saturdays, Sundays and legal holidays. This is the minimum period of recess and may be lengthened by the Congress in its discretion. It may however, be called in special session at any time by the President.

The President's call is not necessary in some instances:
1. When the Congress meets to canvass the presidential elections
2. To call a special election when both the Presidency and Vice-Presidency are vacated
3. When it decides to exercise the power of impeachment where the respondent is the President himself.[176]

Q: May the President limit the subjects which may be considered during a special election called by him?
A: No. The President is given the power to call a session and to specify subjects he wants considered, but it does not empower him to prohibit consideration of other subjects. After all, Congress, if it so wishers, may stay in regular session almost all year round.[177]

Joint Sessions

[173] Bernas Primer, p.247 (2006).
[174] Cruz. Philippine Political Law.
[175] Cruz, Philippine Political Law. Legislators cannot be members of the board of corporations with contract with the government. Such would be at least indirect financial interest. (Bernas Commentary, p. 710, 10th ed.)
[176] Cruz, Philippine Political Law,
[177] Bernas Commentary, p.711, (2003 ed.)

a. Voting Separately
   i) Choosing the President (art. 7 §4)
   ii) Determine President's disability (art. 7 §11)
   iii) Confirming nomination of the Vice-President (art. 7 §9)
   iv) Declaring the existence of a state of war (art. 6 §23)
   v) Proposing constitutional amendments (art. 12 §1)
b. Voting Jointly
   To revoke or extend proclamation suspending the privilege of the writ of habeas corps or placing the Philippines under martial law. (art 7 §18)

Instances when Congress votes other than majority.

a. To suspend or expel a member in accordance with its rules and proceedings: 2/3 of all its members (Sec. 16, Art. VI).
b. Yeas and nays entered in the Journal: 1/5 of the members present (Sec. 16(4), Art. VI)
c. Declare the existence of a state of war: 2/3 of both houses in joint session voting separately (Sec. 23, Art. VI)
d. Re-passing of a bill after Presidential veto: 2/3 of the Members of the House where it originated followed by 2/3 of the Members of the other House.
e. Determining President's disability after submissions by both the Cabinet and the President: 2/3 of both Houses voting separately (Sec. 11, Art. VII)

B. Adjournment

> Section 16
> (5) Neither House during the session of the Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Either House may adjourn even without the consent of the other provided that it will not be more than three days.

If one House should adjourn for more than three days, it will need the consent of the other.

Neither house can adjourn to any other place than that in which the two Houses shall be sitting without the consent of the other.

Reason. These rules prevent each house from holding up the work of legislation.[178] This coordinative rule is necessary because the two houses form only one legislative body.[179]

C. Officers

> **Section 16.** (1) The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.
> Each House shall choose such other officers as it may deem necessary.

Officers of the Congress:
(1) Senate President
(2) House Speaker
(3) Such other officers as each House may deem necessary.

It is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives. (Santiago v. Guingona)

The method of choosing who will be the other officers must be prescribed by Senate itself. In the absence of constitutional and statutory guidelines or specific rules, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto. On grounds of respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province of courts to direct Congress how to do its work. (Santiago v. Guingona)

D. Quorum

> Section 16
> (2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties, as such House may provide.

Quorum to do business. A majority of each House shall constitute a quorum to do business.

Quorum is based on the proportion between those physically present and the **total membership** of the body.

A smaller number may adjourn from day to day.

[178] Sinco, Philippine Political Law, p 170 (1954).

[179] Bernas Commentary, p.723, (2003 ed.)

A smaller number may compel the attendance of absent members in such manner and under such penalties as the House may provide.

The members of the Congress cannot compel absent members to attend sessions if the reason of absence is a legitimate one. The confinement of a Congressman charged with a non-bailable offense (more than 6 years) is certainly authorized by law and has constitutional foundations. (People v. Jalosjos)

The question of quorum cannot be raised repeatedly, especially when a quorum is obviously present, for the purpose of delaying the business of the House. (Arroyo v. De Venecia, June 26, 1998)

E. Internal Rules

Power to determine rules
Nature of the rules
Role of courts

> Section 18
> (3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

1. Power to determine internal rules. Each House may determine the rules of its proceedings.

2. Nature of the Rules. The rules adopted by deliberative bodies (such as the House) are subject to revocation, modification, or waiver by the body adopting them. (Arroyo v. De Venecia)

The power to make rules is not one, once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested and absolutely beyond the challenge of any other body. (Arroyo v. De Venecia)

3. Role of Courts. The Court may not intervene in the implementation of the rules of either House except if the rule affects private rights. On matters affecting only internal operation of the legislature, the legislature's formulation and implementation of its rules is beyond the reach of the courts. When, however, the legislative rule affects private rights, the courts cannot altogether be excluded. (US v. Smith)

F. Disciplinary powers (suspension/expulsion)

Basis for punishment. Each House may punish its Members for disorderly behavior.

Preventive Suspension v. Punitive Suspension. A congressman may be suspended as a preventive measure by the Sandiganbayan. The order of suspension prescribed by the Anti-Graft and Corrupt Practices Act is distinct from the power of congress to police its own ranks under the Constitution. The suspension contemplated in the constitutional provisions is a punitive measure that is imposed upon determination by a House upon an erring member. The suspension spoken in AGCPA is not a penalty but a preventive measure. The doctrine of separation of powers by itself may not be deemed to have excluded members of Congress from AGCPA. The law did not exclude from its coverage the members of the Congress and therefore the Sandiganbayan may decree a preventive suspension order. (Santiago v. Sandiganbayan) (2002 Bar Question)

2/3 Requirement. Each House may with the concurrence of two-thirds of all its Members, suspend or expel a Member.

Period of suspension. A penalty of suspension, when imposed, shall not exceed sixty days.

Not subject to judicial review. Disciplinary action taken by Congress against a member is not subject to judicial review because each House is the sole judge of what disorderly behavior is. (Osmena v. Pendatun)

G. Legislative Journal and Congressional Record

Requirement
Journal
Purpose of Journal
What may be excluded
Matters to be entered to the journal
Journal v. Extraneous Evidence
Record

> Section 18
> (4) Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may, in its judgment, affect national security; and the yeas and nays on any question shall, at the request of one-fifth of the Members present, be entered in the Journal.
> Each House shall also keep a Record of its Proceedings.

1. Requirement. Each House shall keep a Journal of its proceedings, and from time to time publish the same.

2. What is a journal? The journal is usually an abbreviated account of the daily proceedings.[180] A legislative journal is defined as "the official record of what is 'done and past' in a legislative [body]. It is so called because the proceedings are entered therein, in chronological order as they occur from day to day.[181]

3. Purpose of the requirement that a journal be kept:
(1) To insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members of their respective constituents; and
(2) To provide proof of what actually transpired in the legislature. (Field v. Clark)

4. What may be excluded. The Constitution exempts from publication parts which in the judgment of the House affect national security.

5. Matters which, under the Constitution, are to be entered in the journal:
1. Yeas and nays on third and final reading of a bill.
2. Veto message of the President
3. Yeas and nays on the repassing of a bill vetoed by the President
4. Yeas and nays on any question at the request of 1/5 of members present

6. Journal vs. Extraneous evidence. The Journal is conclusive upon the Courts (US v. Pons)

7. What is a Record? The Record contains a word for word transcript of the deliberation of Congress.[182]

H. Enrolled bill doctrine

Enrolled Bill
Enrolled Bill Doctrine
Underlying Principle
Enrolled Bill v. Journal Entry
Enrolled bill v. matters required to be entered in the journals
Remedy for Mistakes

1. Enrolled Bill. One which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the [president]. (Black Law Dictionary)

2. Enrolled bill doctrine: The signing of a bill by the Speaker of the House and the Senate President and the certification by the secretaries of both Houses of Congress that such bill was passed are conclusive of its due enactment. (Arroyo v. De Venecia)

Where the conference committee report was approved by the Senate and the HR and the bill is enrolled, the SC may not inquire beyond the certification and approval of the bill, and the enrolled bill is conclusive upon the judiciary (Phil. Judges Association v. Prado)

3. Underlying Principle of the Doctrine. Court is bound under the **doctrine of separation of powers** by the contents of a duly authenticated measure of the legislature. (Mabanag v. Lopez Vito, Arroyo v. De Venecia)

4. Enrolled bill vs. Journal Entry: The enrolled bill is the official copy of approved legislation and bears the certification of the presiding officers of the legislative body. The respect due to a co-equal department requires the courts to accept the certification of the presiding officer as conclusive assurance that the bill so certified is authentic. (Casco Philippine Chemical Co. v. Gimenez) **However**, If the presiding officer should repudiate his signature in the "enrolled bill", the enrolled will not prevail over the Journal. This is because the enrolled bill theory is based mainly on the respect due to a co-equal department. When such co-equal department itself repudiates the enrolled bill, then the journal must be accepted as conclusive.

5. Enrolled bill v. Matters required to be entered in the journals. The Supreme Court has explicitly left this matter an open question in Morales v. Subido.[183]

6. Remedy for Mistakes. If a mistake was made in printing of the bill before it was certified by Congress and approved by the President, the remedy is amendment or corrective legislation, not judicial decree. (Casco (Phil) Chemical Co. Gimenez)

VII. Electoral Tribunals, CA

Electoral Tribunal
CA
Constitution of ET and CA

A. Electoral Tribunal

Electoral Tribunals
Composition
Rationale
Independence

[180] Bernas Commentary, p.723, (2003 ed.)
[181] Sinco, Philippine Political Law 191, (1954).
[182] Bernas Commentary, p.723, (2003 ed.)
[183] Bernas Primer, p. 251 (2006 ed.); Cruz in his book says: "But except only where the matters are required to be entered in the journals, the contents of the enrolled bill shall prevail over those of the journal in case of conflict. (Page 129 Philippine Political Law (1995 ed).

Security of Tenure
Power
Jurisdiction of ET
Jurisdiction of COMELEC
Judicial Review

> **Section 17.** The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each electoral tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior justice in the Electoral tribunal shall be its Chairman.

1. Two Electoral Tribunals. The Senate and the House of Representatives shall each have an Electoral Tribunal

2. Composition of ET
Each electoral tribunal shall be composed of 9 members. 3 from the SC (to be designated by the CJ) and 6 from the respective House.

3. Why create an electoral tribunal independent from Congress. It is believed that this system tends to secure decisions rendered with a greater degree of impartiality and fairness to all parties. It also enables Congress to devote its full time to the performance of its proper function, which is legislation, rather than spend part of its time acting as judge of election contests.[184]

Proportional Representation. The congressmen who will compose the electoral tribunal shall be chosen on the basis of proportional representation from the political and party-list parties.

Reason for Mixed Membership. The presence of justices of the Supreme Court in the Electoral Tribunal neutralizes the effects of partisan influences in its deliberations and invests its action with that measure of judicial temper which is greatly responsible for the respect and confidence people have in courts.[185]

Chairman. The senior Justice in the electoral tribunal shall be its Chairman.

SET cannot legally function absent its entire membership of senators, and no amendment of its rules can confer on the 3 remaining justice-members alone, the power of valid adjudication of senatorial election contest. (Abbas v. SET)

4. Independence. The Congress may not regulate the actions of the electoral tribunals even in procedural matters. The tribunal is an independent constitutional body. (Angara v. Electoral Commission)

5. Security of Tenure. Members of ET have security of tenure. Disloyalty to the party is not a ground for termination. (Bondoc v. Pineda) (2002 Bar Question)

6. Power. The Electoral Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members.
The tribunal has the power to promulgate rules relating to matters within its jurisdiction, including period for filing election protests. (Lazatin v. HET)
Electoral Tribunal has incidental power to promulgate its rules and regulations for the proper exercise of its function (Angara v. Electoral Commission)

7. Jurisdiction of Electoral Tribunal
The Electoral Tribunal shall be the sole judge of all contests relating to the **election, returns, and qualifications** of their respective members.

The jurisdiction of HRET is not limited to constitutional qualifications. The word "qualifications" cannot be read to be qualified by the term "constitutional". Where the law does not distinguish, the courts should likewise not. The filing of a certificate of candidacy is a statutory qualification.(Guerrero v. COMELEC)

Where a person is contesting the proclamation of a candidate as senator, it is SET which has exclusive jurisdiction to act. (Rasul v. COMELEC)

Contest **after proclamation** is the jurisdiction of HRET (Lazatin v. COMELEC)

When there is an **election contest** (when a defeated candidate challenge the qualification and claims the seat of a proclaimed winner), the Electoral Tribunal is the sole judge.

[184] Sinco, Philippine Political Law, p.158 (1954).

[185] Sinco, Philippine Political Law, p.158 (1954).

Errors that may be verified only by the opening of ballot boxes must be recoursed to the electoral tribunal.

Once a winning candidate has been proclaimed, taken his oath and assumed office as a member of the House, COMELEC's jurisdiction over election contest relating to his election, returns and qualifications ends, and the HRET's own jurisdiction begins. (Aggabao v. COMELEC)

Nature of election contests. An election is not like an ordinary action in court. Public interests rather than purely private ones are involved in its determination.[186] It is therefore not permissible that such a contest be settled by stipulation between the parties, nor can judgment be taken by default; but the case must be decided after thorough investigation of the evidence.[187]

Absence of election contest. In the absence of an election contest, however, the electoral tribunals are without jurisdiction. Thus, the power of each House to defer oath-taking of members until final determination of election contests filed against them has been retained by each House. (Angara v. Electoral Commission)

Invalidity of Proclamation. An allegation of invalidity of a proclamation is a matter that is addressed to the sound discretion of the Electoral Tribunal. (Lazatin v. COMELEC)

Motion to Withdraw. The motion to withdraw does not divest the HRET the jurisdiction on the case. (Robles v. HRET)

8. Jurisdiction of COMELEC

Pre-proclamation controversies include:
(1) Incomplete returns (omission of name or votes)
(2) Returns with material defects
(3) Returns which appeared to be tampered with, falsified or prepared under duress or containing discrepancies in the votes (with significant effect on the result of election)

"Where a petitioner has seasonably filed a motion for reconsideration of the order of the Second Division suspending his proclamation and disqualifying him, the COMELEC was not divested of its jurisdiction to review the validity of the order of the Second Division. The order of the Second division is unenforceable as it had not attained finality. It cannot be used as the basis for the assumption to office of respondent. The issue of the validity of the order of second division is still within the exclusive jurisdiction of the COMELEC en banc. (Codilla v. De Venecia)

It is the COMELEC which decides who the winner is in an election. A person holding office in the House must yield his or her seat to the person declared by the COMELEC to be the winner and the Speaker is duty bound to administer the oath[188]. The Speaker shall administer the oath on the winner.

In election contests, however, the jurisdiction of the COMELEC ends once a candidate has been proclaimed and has taken his oath of office as a Member of Congress. Jurisdiction then passes to the Electoral Tribunal of either the House or the Senate.[189]

9. Judicial Review

SC may intervene in the creation of the electoral tribunal. SC may overturn the decisions of HRET when there is **GADLJ**. (Lerias v. HRET)

Judicial review of decisions or final resolutions of the electoral tribunals is possible only in the exercise of the Court's so called extra-ordinary jurisdiction upon a determination that the tribunal's decision or resolution was rendered without or in excess of jurisdiction or with **grave abuse of discretion** constituting **denial of due process**. (Robles v. HET)

> Q: Are the decisions rendered by the Electoral Tribunals in the contests of which they are the sole judge appealable to the Supreme Court?
> A: No. The decisions rendered by the Electoral Tribunals in the contests of which they are the sole judge are not appealable to the Supreme Court **except in cases of a clear showing of a grave abuse of discretion**.

B. Commission on Appointments

Function of CA
Composition
Proportional Representation
Fractional Seats
Voting
Action on Appointments
Ad Interim Appointments not acted upon
Ruling

> **Section 18.** There shall be a Commission on Appointments consisting of the President of the Senate, as ex-officio Chairman,

[186] Sinco, Philippine Political Law, p.161 (1954).
[187] Reinsch,, American Legislature, p 216.
[188] *Codilla v. de Venecia,* G.R. No. 150605. December 10, 2002.
[189] *Aggabao v. Comelec,* G.R. No. 163756. January 26, 2005; *Vinzons-Chato v. Comelec,* GR 172131, April 2, 2007.

> twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The Chairman of the Commission shall not vote, except in the case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from the submission. The Commission shall rule by a majority vote of all its Members.

1. Function of CA. It acts as a legislative check on the appointing authority of the President. For the effectivity of the appointment of certain key officials, the consent of CA is needed.

2. Composition (25 members)
(1) Senate President as chairman
(2) 12 senators
(3) 12 members of HR

3. Proportional Representation. The members of the Commission shall be elected by each House on the basis of proportional representation from the political party and party list.

The sense of the Constitution is that the membership in the Commission on Appointment must always reflect political alignments in Congress and must therefore adjust to changes. It is understood that such changes in party affiliation must be permanent and not merely temporary alliances (Daza v. Singson)

Endorsement is not sufficient to get a seat in COA. (Coseteng v. Mitra)

4. Fractional Seats. Fractional seats cannot be rounded off. The seats should be vacant. (Coseteng v. Mitra) A full complement of 12 members from the Senate is not mandatory (Guingona v. Gonzales) Holders of .5 proportion belonging to distinct parties may not form a unity for purposes of obtaining a seat in the Commission. (Guingona v. Gonzales)

5. Voting. The Chairman shall not vote except in the case of a tie.

6. Action on appointments. The Commission shall act on all appointments submitted to it within **30 session days** of the Congress from the submission.

7. Ad interim appointments not acted upon. Ad interim appointments not acted upon at the time of the adjournment of the Congress, even if the thirty-day period has not yet expired, are deemed by-passed under Article VII, Section 16.

8. Ruling. The Commission shall rule by a majority vote of all its Members.

C. Constitution of ET and CA

Organization
Reason for early organization of ETs
Reason of provision on CA
CA Meeting

> **Section 19.** The Electoral Tribunals and the Commission on Appointments shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of the President and the Speaker. The Commission on Appointments shall meet only while the Congress is in session, at the call of its Chairman or a majority of all its members, to discharge such powers and functions as are herein conferred upon it.

1. Organization. The ET and COA shall be constituted within 30 days after the Senate and the House shall have been organized with the election of the President and the Speaker.

2. Reason for Early organization of ETs. In the case of Electoral Tribunals, the need for their early organization is obvious, considering the rash of election contests already waiting to be filed after, even before, the proclamation of the winners. This is also the reason why, unlike the Commission of Appointments, the Electoral Tribunals are supposed to continue functioning even during the recess.[190]

3. Reason, provision on COA. The provision is based on the need to enable the President to exercise his appointing power with dispatch in coordination with the Commission on Appointments.
The rule that the Commission on Appointments can meet only during the session of the Congress is the reason why *ad interim* appointments are permitted under the Constitution. These appointments are made during the recess, subject to consideration later by the Commission, for confirmation or rejection.
But where the Congress in is in session, the President must first clear his nominations with the

[190] Cruz, Philippine Political Law.

Commission on Appointments, which is why it must be constituted as soon as possible. Unless it is organized, no appointment can be made by the President in the meantime.[191]

4. COA meeting
The Commission on Appointments shall meet only while the Congress is in session to discharge its powers and functions.

The Commission on Appointments shall meet at the call of its Chairman or a majority of all its members

VIII. RECORDS AND BOOKS OF ACCOUNTS

> **Section 20.** The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for by each Member.

Records and books of accounts
The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law.

The records and books of accounts of the Congress shall be audited by the Commission on Audit.

The Commission on Audit shall publish annually an itemized list of amounts paid to and expenses incurred for by each Member.

IX. LEGISLATIVE HEARINGS (INQUIRIES AND OVERSIGHT FUNCTIONS)

A. Inquiries in Aid of Legislation
B. Oversight Functions

There are two provisions on legislative hearing, Sections 21 and 22. Section 21 is about legislative investigations in aid of legislation.

Section 21. Legislative Investigation	Section 22. Oversight Function
Who may appear	
Any person	Department heads
Who may be summoned	
Anyone except the President and SC members (Senate v. Ermita)	No one. Each house may only request the appearance of department heads.
Subject Matter	
Any mattes for purpose of legislation	Matters related to the department only
Obligatory force of appearance	
Mandatory	Discretionary

A. Inquiries in Aid of Legislation
Who has the power
Nature
Limitation of Power
Reason for Limitation
Scope of Questions
Who may be summoned
Power to Punish
Rights of Persons
Courts and Committee
Power of Inquiry v. Executive Privilege
Neri v. Senate Committee

> **Section 21.** The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Power of Inquiry

1. Who has the power
The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation.

2. Nature
The power of inquiry is an **essential** and **appropriate auxiliary** to the legislative action. (Arnault v. Nazareno) It has been remarked that the power of legislative investigation may be implied from the express power of legislation and does not itself have to be expressly granted.[192]

3. Limitations[193]:
1. It must be in aid of legislation[194]
2. It must be in accordance with its duly published rules of procedure[195]

[191] Cruz, Philippine Political Law.

[192] Cruz, Philippine Political Law, p. 155 (1995 ed).

[193] *See* Concurring Opinion of Justice Corona in Neri v. Senate Committee; *See also* Bernas Commentary, p737 (2003 ed).

[194] This requirement is an essential element for establishing jurisdiction of the legislative body.

[195] Section 21 may be read as requiring that Congress must have "duly published rules of procedure" *for legislative investigations.* Violation of these rules would be an offense against due process. (Bernas Commentary p. 740 (2003 ed).

3. The rights of persons appearing in or affected by such inquiries shall be respected.
4. Power of Congress to commit a witness for contempt terminates when the legislative body ceases to exist upon its final adjournment.[196]

(Note: 1-3 are explicit limitations while 4 is an implicit limitation.)

4. Reason for the limitations

The reason is in the past, this power was much abused by some legislators who used it for illegitimate ends to browbeat or intimidate witnesses usually for grandstanding purposes only. There were also times when the subject of inquiry was purely private in nature and therefore outside the scope of the powers of Congress.[197]

5. Scope of questions

It is not necessary that every question propounded to a witness must be material to a proposed legislation. (Arnault v. Nazareno) This is because the legislative action is determined by the information gathered as a whole. (Arnault v. Nazareno)

6. Who may be summoned under Section 21

Senate v. Ermita[198] specified who may and who may not be summoned to Section 21 hearings. Thus, under this rule, even a Department Head who is an alter ego of the President may be summoned. Thus, too, the Chairman and members of the Presidential Commission on Good Government (PCGG) are not except from summons in spite of the exemption given to them by President Cory Aquino during her executive rule.[199] The Court ruled that **anyone, except the President and Justices of the Supreme Court may be summoned**.

7. Power to punish

Legislative Contempt. The power of investigation necessarily includes the power to punish a contumacious witness for contempt. (Arnault v. Nazareno)

Acts punished as legislative contempt. The US Supreme Court in the case of *Marshall v. Gordon*[200] mentions:

1. Physical obstruction of the legislative body in the discharge of its duties.
2. Physical assault upon its members for action taken or words spoken in the body;
3. Obstruction of its officers in the performance of their official duties
4. Prevention of members from attending so that their duties might be performed
5. **Contumacy in refusing to obey orders to produce documents or give testimony which was a right to compel**.[201]

Power to punish for contempt and local legislative bodies. The power to punish may **not** be claimed by local legislative bodies (Negros Oriental Electric Cooperative v. Sangguniang Panglunsod)

Power to punish is sui generis. The exercise of the legislature of contempt power is a matter of preservation and independent of the judicial branch. Such power is *sui generis*. (Sabio v. Gordon)

> Q: When may a witness in an investigation be punished for contempt?
> A: When a contumacious witness' testimony is required in a matter into which the legislature or any of its committees has jurisdiction to. (In short, the investigation must be in aid of legislation.) (Arnault v. Nazareno)
>
> Q: For how long may a private individual be imprisoned by the legislature for contempt?
> A: *For HR*: Until final adjournment of the body. *For Senate*: Offender could be imprisoned indefinitely by the body provided that punishment did not become so long as to violate due process. (Arnault v. Nazareno)

8. Rights of persons

PhilComStat has no reasonable expectation of privacy over matters involving their offices in a corporation where the government has interest. (Sabio v. Gordon)

9. Courts and the Committee

A court cannot enjoin the appearance of a witness in a legislative investigation. (Senate Blue Ribbon Committee v. Judge Majaducon)
Bernas: The general rule of fairness, (which is what due process is about) could justify exclusion of persons from appearance before the Committee.

> Q: Section 1 of EO 464 provides that "all heads of departments of the Executive Branch shall secure the consent of the President prior to appearing before House of Congress." Does this contravene the

[196] This must be so inasmuch as the basis of the power to impose such a penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body. (CJ Avancena in Lopez v De los Reyes)
[197] Cruz, Philippine Political Law, p. 155 (1995 ed).
[198] G.R. No. 169777, April 20, 2006.
[199] *Sabio v. Gordon,* G.R. No. 174318, October 17, 2006.
[200] 243 US 521.
[201] Sinco, Philippine Political Law, p 208 (1954ed).

power of inquiry vested in the Congress? Is Section 1 valid?
A: Valid. The SC read Section 1 of EO 464 to mean that department heads need the consent of the president only in **question hour** contemplated in Section 22 of Article VI. (The reading is dictated by the basic rule of construction that issuances must be interpreted,as much as possible, in a way that will render it constitutional.)

Section 1 of EO 464 cannot be applied to appearances of department heads **in inquiries in aid of legislation**. Congress is not bound in such instances to respect the refusal of the department head in such inquiry, unless a **valid claim of privilege** is subsequently made, either by the President or by the Executive Secretary. (Senate v. Ermita; EO 464 case)

10. Power of Inquiry v. Executive Privilege

Senate v. Ermita: "Congress has undoubtedly has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, **it must so assert it and state the reason therefore and why it must be respected**." (Justice Carpio Morales in *Senate v. Ermita*)

Neri v. Senate: *Was the claim of executive privilege properly invoked in this case?* Yes according to the Justice Leonardo-De Castro's ponencia. For the claim to be properly invoked, there must be a formal claim by the President stating the "precise and certain reason" for preserving confidentiality. The grounds relied upon by Executive Secretary Ermita are specific enough, since what is required is only that an allegation be made "whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc." The particular ground must only be specified, and the following statement of grounds by Executive Secretary Ermita satisfies the requirement: "The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China."[202]

11. Neri v. Senate Committee

Background:
This case is about the Senate investigation of anomalies concerning the NBN-ZTE project. During the hearings, former NEDA head Romulo Neri refused to answer certain questions involving his conversations with President Arroyo on the ground they are covered by executive privilege. When the Senate cited him in contempt and ordered his arrest, Neri filed a case against the Senate with the Supreme Court. *On March 25, 2008, the Supreme Court ruled in favor of Neri and upheld the claim of executive privilege.*

Issues:
(1) xxx
(2) Did the Senate Committees commit grave abuse of discretion in citing Neri in contempt and ordering his arrest?

Ruling:
(1) xxx
(2) Yes. The Supreme Court said that the Senate Committees committed grave abuse of discretion in citing Neri in contempt. The following were the reasons given by the Supreme Court:

a. There was a legitimate claim of executive privilege.
b. Senate Committees did not comply with the requirement laid down in *Senate v. Ermita* that the invitations should contain the "possible needed statute which prompted the need for the inquiry" along with "usual indication of the subject of inquiry and the **questions** relative to and in furtherance thereof."
c. A reading of the transcript of the Committees' proceeding reveals that only a minority of the member of the Senate Blue Ribbon Committee was present during the deliberations Thus, there is a cloud of doubt as to the validity of the contempt order
d. **The Senate Rules of Procedure in aid of legislation were not duly published in accordance to Section 21 of Article VI.**
e. The contempt order is arbitrary and precipitate because the Senate did not first rule on the claim of executive privilege and instead dismissed Neri's explanation as unsatisfactory. This is despite the fact that Neri is not an unwilling witness.

Hence, the *Senate order* citing Neri in contempt and ordering his arrest was not valid.

B. Oversight Function

Purpose of Section 22
Oversight Function
Appearance of Heads of Department
Why Permission of President Needed
Exemption from Summons
Appearance at the Request of Congress
Written Questions
Scope of Interpellations
Executive Session
Congress may refuse the initiative

> **Section 22.** The Heads of Departments may upon their own initiative, with the consent of the President, or upon the request of either House as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their

[202] Primer on Neri v. Senate made by Atty. Carlos Medina.

> departments. Written questions shall be submitted to the President of Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

1. Purpose of Section 22

The provision formalizes the "oversight function" of Congress. Section 22 establishes the rule for the exercise of what is called the "oversight function" of Congress. Such function is intended to enable Congress to determine how laws it has passed are being implemented.

2. Oversight function

"Broadly defined, congressional oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted."[203] The acts done by Congress in the exercise of its oversight powers may be divided into three categories, to wit: scrutiny, investigation, and supervision.[204]

3. Appearance of Heads of Departments by their own initiative

The Heads of Departments may upon their own initiative, **with the consent of the President** appear before and be heard by either House on any matter pertaining to their departments.

4. Why permission of the President needed

In deference to separation of powers, and because Department Heads are alter egos of the President, they may not appear without the permission of the President.[205]

5. Exemption from summons applies only to Department Heads

It should be noted, that the exemption from summons applies only to Department Heads and not to everyone who has Cabinet rank.

Q: Does Section 22 provide for a "question hour"?
A:

Bernas Primer: No. the "question hour" is proper to parliamentary system where there is no separation between the legislative and executive department. Section 22, unlike in the "question hour" under the 1973 Constitution, has made the appearance of department heads voluntary.

But wait! The SC in *Senate v. Ermita*, adopting the characterization of constitutional commissioner Hilario Davide, calls Section 22 as the **provision on "Question Hour":** *"[Section 22] pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress' oversight function."*

Reconcile: Although the Court decision calls this exercise a "question hour," it does so only by analogy with its counterpart in parliamentary practice.

6. Appearance at the request of Congress

The Heads of Departments may upon their own initiative, with the consent of the President, or **upon the request of either House** as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments.

7. Written Questions

Written questions shall be submitted to the Senate President or the House Speaker at least 3 days before their scheduled appearance.

8. Scope of Interpellations

Interpellations shall not be limited to written questions, but may cover matters related thereto.

9. Executive Session

The appearance shall be conducted in **executive session** when:
(1) The public interest so requires
(2) The President so states in writing.

10. Congress may refuse the initiative

Because of separation of powers, department secretaries may not impose their appearance upon

[203] Macalintal v. Commission on Elections, 405 SCRA 614 (2003), at 705.
[204] Macalintal v. Commission on Elections, 405 SCRA 614 (2003), at 3.
[205] This was explicitly mentioned in the deliberations of the 1935 Constitutional Convention where some Delegates had doubts about the propriety or constitutionality of Department Heads appearing in Congress. Such deference is not found, by the Court's interpretation, in Section 21.

either House.[206] Hence, the Congress may refuse the initiative taken by the department secretary.[207]

X. Emergency Powers

A. Declaration of the existence of a state of war
B. Delegation of emergency power

A. War power

1. Power to declare existence of a state of war
2. Rewording of the provision

> **Section 23.** (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

1. Power to declare existence of a state of war[208]

The Congress, by a vote of 2/3 of **both** Houses in **joint session** assembled, **voting separately**, shall have the sole power to declare the existence of a state of war.

2. Rewording of the provision

From 1935 Constitution's power to declare war[209] to power to declare the existence of a state of war under 1987.

Bernas: The difference between the two phraseologies is not substantial but merely in emphasis. The two phrase were interchangeable, but the second phrase emphasizes more the fact that the Philippines, according to Article II, Section 2, renounces aggressive war as an instrument of national policy.[210]

> Q: May a country engage in war in the absence of declaration of war?
> A: Yes. The actual power to *make* war is lodged in the Executive. The executive when necessary may make war even in the absence of a declaration of war.[211]

B. Delegation of emergency powers

1. Requisites for Delegation
2. Duration of delegation
3. Powers that may be delegated
4. Withdrawal of powers

> **Section 23**
> (2) In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such power shall cease upon the next adjournment thereof.

1. Requisites for the delegation: (1997 Bar Q)

(1) There must be a war[212] or other national emergency
(2) Law authorizing the president for a limited period and subject to such restrictions as Congress may prescribe
(3) Power to be exercised must be necessary and proper to carry out a declared national policy.

2. Duration of the delegation:

(1) Until withdrawn by resolution of Congress
(2) Until the next adjournment of Congress

3. Powers that may be delegated

Congress may authorize the President, to exercise powers necessary and proper to carry out a declared national policy Note that the nature of delegable power is not specified. *It is submitted* that the President may be given emergency **legislative powers** if Congress so desires.[213]

4. Withdrawal of powers

Congress may do it by a mere resolution.[214] And such resolution does not need presidential approval.[215]

XI. BILLS/ LEGISLATIVE PROCESS

Origination Clause
One bill-one subject rule
Passage of a bill
Presidential Approval, Veto or Inaction; Legislative Reconsideration
Item Veto
Doctrine of inappropriate provisions
Executive Impoundment
Legislative Veto

A. Origination Clause

[206] Bernas Primer at 263 (2006 ed.)
[207] Bernas Commentary, p 744 (2003 ed).
[208] War is defined as "armed hostilities between the two states. (II RECORD 169)
[209] Wording of the 1935 Constitution.
[210] Bernas Commentary, p 745 (2003 ed).
[211] Bernas Primer at 264 (2006 ed.)
[212] War is defined as "armed hostilities between the two states. (II RECORD 169)
[213] Bernas Primer at 265 (2006 ed.)
[214] *See* concurring opinion of Justice Padilla in Rodriguez v. Gella, 49 Off. Gaz. 465, 472.
[215] Bernas Primer at 265 (2006 ed.)

Exclusive Origination Clause
Bills that must exclusively originate from HR
Origination from the House, Meaning
Reason for exclusive origination
Senate may propose amendments
Scope of Senate's power to introduce amendments

> **Section 24.** All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

1. Origin of money bills, private bills and bills of local application

All appropriation[216], revenue[217] or tariff bills[218], bills authorizing increase of the public debt[219], bills of local application[220] and private bills[221] shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

2. Bills that must exclusively originate from the HR:

(1) Appropriation bills
(2) Revenue bills
(3) Tariff bills
(4) Bills authorizing increase of the public debt
(5) Bills of local application
(6) Private bills

3. Origination from the House

The exclusivity of the prerogative of the House of Representatives means simply that the House alone can initiate the passage of revenue bill, such that, if the House does not initiate one, no revenue law will be passed. (Tolentino v. Secretary of Finance)

4. Reason for exclusive origination

The district representatives are closer to the pulse of the people than senators are and are therefore in a better position to determine both the extent of the legal burden they are capable of bearing and the benefits that they need.[222] It is more numerous in membership and therefore also more representative of the people.[223]

5. Senate may propose amendments

The addition of the word "exclusively" in the Constitution is not intended to limit the power of the Senate to propose amendments to revenue bills. (Tolentino v. Sec. of Finance)

6. Scope of the Senate's power to introduce amendments

Once the House has approved a revenue bill and passed it on to the Senate, the Senate can completely overhaul it, by amendment of parts or by **amendment by substitution**, and **come out with one completely different from what the House approved**. Textually, it is the "bill" which must exclusively originate from the House; but the "law" itself which is the product of the total bicameral legislative process originates not just from the House but from both Senate and House. (Tolentino v. Secretary of Finance)

(Discussion of Section 25 can be found after Section 29(3))

B. One bill-one subject rule

Mandatory Nature of the Rule
Purpose of the Rule
Liberal Interpretation of the Rule
Germane
Not Germane

> **Section 26.** (1) Every bill passed by the Congress shall embrace only one subject shall be expressed in the title thereof.

1. Mandatory nature of the rule

Every bill passed by the Congress shall embrace only one subject. The subject shall be expressed in the title of the bill. This rule is **mandatory**.

The requirement is satisfied when:
(1) All parts of the law relate to the subject expressed in the title
(2) It is not necessary that the title be a complete index of the content (PHILCONSA v. Gimenez)

[216] An appropriation bill is one whose purpose is to set aside a sum of money for public use. Only appropriation bills in the strict sense of the word are comprehended by the provision; bills for other purposes which incidentally set aside money for that purpose are not included. Bernas Commentary, p 748 (2003 ed).
[217] A revenue bull is one that levies taxes and raises funds for the government. Cruz, Philippine Political Law, p. 144 (1995 ed).
[218] A tariff bill specifies the rates of duties to be imposed on imported articles. Cruz, Philippine Political Law, p. 144 (1995 ed).
[219] A bill increasing public debt is illustrated by one floating bonds for public subscription redeemable after a certain period. Cruz, Philippine Political Law, p. 144 (1995 ed).
[220] Bills of local application are those which is limited to specific localities, such for instance as the creation of a town. Bernas Commentary, p 748 (2003 ed).
[221] Private bills are those which affect private persons, such for instance as a bill granting citizenship to a specific foreigner. Bernas Commentary, p 748 (2003 ed). Private bills are illustrated by a bill granting honorary citizenship to a distinguished foreigner. Cruz, Philippine Political Law, p. 155 (1995 ed).

[222] . Bernas Commentary, p 748 (2003 ed).
[223] Cruz, Philippine Political Law, p. 145 (1995 ed).

2. Purpose of the Rule:

(1) To prevent hodge-podge or log-rolling legislation
(2) To prevent surprise or fraud upon the legislature
(3) To fairly appraise the people. (Central Capiz v. Ramirez)

3. Liberal interpretation of the rule

The rule should be given a practical rather than a strict construction. It should be sufficient compliance with such requirement if the title expresses the general subject and all the provisions of the statute are germane to that general subject. (Sumulong v. COMELEC)

4. Germane

A partial exemption from the increase of tax imposed is not a deviation from the general subject of the law. (Insular Lumber Co. v. CTA)

A tax may be germane and reasonably necessary for the accomplishment of the general object of the decree for regulation. (Tio v. VRB)

A repealing clause does not have to be expressly included in the title of the law. (Phil. Judges Assoc. v. Prado)

The creation of a new legislative district is germane to "the conversion of a municipality to an urbanized city." (Tobias v. Abalos)

The reorganization of the remaining administrative regions is germane to the general subject of "establishing the ARMM". (Chiongbayan v. Orbos)

The **expansion** in the jurisdiction of the Sandiganbayan does not have to be expressly stated in the title of the law (An Act Further **Defining** the Jurisdiction of the Sandiganbayan) because such is the necessary consequence of the amendment. (Lacson v. Executive Secretary)

A provision that states that "no election officer shall hold office for more than four years" is relevant to the title "An Act Providing for a General Registration of voters, Adopting a System of Continuing Registration, Prescribing Procedures Thereof and Authorizing the Appropriation of Funds Therefor" as it seeks to ensure the integrity of the registration process by providing guidelines for the COMELEC to follow in the reassignment of election officers. (De Guzman v. COMELEC)

The **abolition** of 2 municipalities is but a logical consequence of its **merger to create** a city.

5. Not Germane

Prohibition of places of amusement should be included in the title of the law which only provides for the **regulation** of places of amusement. (De la Cruz v. Paras)

C. Passage of a bill

Rules
Procedure
Reason for three readings

> **Section 26**
> (2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies whereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and the nays entered in the Journal.

1. Rules

(1) No bill passed by either House shall become a law unless it has passed three readings on separate days.
(2) Printed copies of the bill in its final form should be distributed to the Members 3 days before its passage (except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency).
(3) Upon the last reading of a bill, no amendment thereto shall be allowed.
(4) The vote on the bill shall be taken immediately after the last reading of a bill.
(5) The yeas and the nays shall be entered in the Journal.

Exception. The certification of the President dispenses with the reading on separate days and the printing of the bill in the final form before its final approval. (Tolentino v. Secretary of Fincance)
Operative. All decrees which are not inconsistent with the Constitution remain operative until they are amended or repealed. (Guingona v. Carague)

2. Procedure:[224]

1. A bill is **introduced** by any member of the House of Representatives or Senate except for some measures that must originate only in the former chamber.
2. The **first reading** involves only a reading of the number and title of the measure and its **referral** by the Senate President or the Speaker to the proper committee for study.
3. The bill may be **killed** in the committee or it may be **recommended for approval**, with or without amendments, sometimes after public hearings are first held thereon. (If there are other bills of the same nature or purpose, they

[224] Cruz, Philippine Political Law, p. 155 (1995 ed).

may all be consolidated into one bill under common authorship or as a committee bill.)

4. Once reported out, the bill shall be calendared for **second reading**. It is at this stage that the bill is read in its entirety, scrutinized, debated upon and amended when desired. The second reading is the most important stage in the passage of the bill.
5. The bill as approved in second reading is printed in its final form and copies thereof are distributed at least three days before the third reading. On **third reading**, the members merely register their votes and explain them if they are allowed by the rules. No further debate is allowed.
6. Once the bill passes third reading, it is **sent to the other chamber**, where it will also undergo the three readings.
7. If also approved by the second House, it will then be **submitted to the President** for his consideration.
8. The **bill is enrolled** when printed as finally approved by the Congress, thereafter authenticated with the signatures of the Senate President, the Speaker, and the Secretaries of their respective chambers, and approved by the President.

3. Reason for three readings

To address the tendency of legislators, (on the last day of the legislative year when legislators were eager to go home), to rush bills through and insert matters which would not otherwise stand scrutiny in leisurely debate.[225]

> **Q:** If the version approved by the Senate is different from that approved by the House of Representatives, how are the differences reconciled?
> **A:** In a bicameral system bills are independently processed by both Houses of Congress. It is not unusual that the final version approved by one House differs from what has been approved by the other. The "conference committee," consisting of members nominated from both Houses, is an extra-constitutional creation of Congress whose function is to propose to Congress ways of reconciling conflicting provisions found in the Senate version and in the House version of a bill.

D. Presidential Approval, Veto or Inaction; Legislative Reconsideration

Three Methods
Presidential Approval
Presidential Veto

[225] *See* Bernas Commentary, p 760 (2003 ed).

Legislative Approval of the bill
Presidential Inaction

> **Section 27.** (1)Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal, and proceed to consider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

1. Three methods by which a bill may become a law: (1988 Bar Question)

1. When the President signs it;
2. When the President vetoes it but the veto is overridden by two-thirds vote of all the members of each House;
3. When the President does not act upon the measure within 30 days after it shall have been presented to him.

2. Presidential approval

(1) Passed bill is presented to the President
(2) President signs the bill if he approves the same
(3) The bill becomes a law.

3. Presidential veto

(1) Passed bill is presented to the President
(2) President vetoes the bill if he does not approve of it.
(3) He returns the passed bill with his objections to the House where it originated. (Veto Mesasge)

> **General rule**: If the president disapproves the bill approved by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.
> **Exceptions**:

(1) President may veto an item in cases of appropriation, revenue and tariff bills.
(2) President may veto inappropriate provisions or riders.

4. Legislative reconsideration of the bill (1993 Bar Question)

(1) The House where the bill originated enters the objections of the President at large in its Journal.
(2) Said House reconsiders the bill.
(3) 2/3 of all the Members of such House agree to pass the bill.
(4) The bill together with the objections is sent to the other House by which it is also reconsidered.
(5) The other House approves the bill by 2/3 of all the members of that House.
(6) The bill becomes a law.
In all such cases, the votes of each House shall be determined by yeas or nays.
The names of the Members voting for or against shall be entered in its Journal.

Q: When does the Constitution require that the yeas and nays of the Members be taken every time a House has to vote?
A:
1. Upon the last and third readings of a bill (art. 6 sec26(2))
2. At the request of 1/5 of the members present (art 6 sec 16(4))
3. In repassing a bill over the veto of the President (art 6 sec 27(1))

5. Presidential Inaction

(1) Passed bill is presented to the President
(2) President does not approve nor communicate his veto to the House where the bill originated within 30 days.
(3) The bill becomes a law.

E. Item veto

> **Section 27**
> (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

Again, the **General rule** is: If the president disapproves the bill approved by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.
Exceptions:

(1) President may veto an **item** in cases of appropriation, revenue and tariff bills.
(2) President may veto **inappropriate provisions** or riders.

Item. An item is an indivisible [sum] of money dedicated to a stated purpose.[226] (Item = Purpose, Amount)
In a tax measure, an item refers to the subject of the tax and the tax rate. It does not refer to the entire section imposing a particular kind of tax. (CIR v. CTA)

The president may not veto the **method** or **manner** of using an appropriated amount. (Bengzon v. Drillon)

F. Doctrine of inappropriate provisions

Doctrine
Reason for the Doctrine
Inappropriate Provisions
Appropriate Provisions

1. Doctrine

A provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue "item". (Gonzales v. Macaraig)

2. Reason for the Doctrine

The intent behind the doctrine is to prevent the legislature from forcing the government to veto an entire appropriation law thereby paralyzing government.

3. Inappropriate Provisions

Repeal of laws. Repeal of laws should not be done in appropriation act but in a separate law (PHILCONSA v. Enriquez) (*use this doctrine carefully)*

The requirement of congressional approval for the release of funds for the modernization of the AFP must be incorporated in a separate bill. Being an inappropriate provision, it was properly vetoed. (PHILCONSA v. Enriquez)

The proviso on "power of augmentation from savings" can by no means be considered a specific appropriation of money. (Gonzales v. Macaraig)

4. Appropriate Provisions

The special provision providing that "the maximum amount of the appropriation for the DPWH to be contracted for the maintenance of national roads and bridges should not exceed 30%" is germane to the appropriation for road maintenance. It specifies how the item shall be spent. It cannot be vetoed separately from the item. (PHILCONSA v. Enriquez)

The special provision that all purchases of medicines by the AFP should comply with Generics Act is a mere advertence to an existing law. It is directly related to the appropriation and cannot be vetoed separately from the item. (PHILCONSA v. Enriquez)

G. Executive Impoundment:

Refusal of the President to spend funds already allocated by Congress for a specific purpose. (See PHILCONSA v. Enriquez)

H. Legislative veto

A Congressional veto is a means whereby the legislature can block or modify administrative action taken under a statute. It is a form of legislative control in the implementation of particular executive actions.

XII. FISCAL POWERS/ POWER OF THE PURSE

Taxation
A. Nature
B. Limitations
C. Delegation of power to tax
D. Exempted from taxation
Spending Power
A. Spending Power
B. Appropriation
C. Non-establishment provision
D. Special Fund
E. Appropriation

Power of the Purse. Congress is the guardian of the public treasury. It wields the tremendous power of the purse. The power of the purse comprehends both the power to generate money for the

[226] Bernas Primer, p. 276 (2006 ed.)

government by taxation and the power to spend it.[227]

TAXATION

> **Section 28.** (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

A. Nature

Definition
Scope
Purposes
Tax
Public Purpose

1. Definition

Taxation refers to the inherent power of the state to demand enforced contributions for public purposes.

2. Scope

Taxation is so pervasive that it reaches even the citizen abroad and his income earned from source outside the State.
General Limit: For a public purpose; Due process and equal protection clauses (Sison v. Ancheta)
Specific Limit: Uniform and equitable (Section 28) (See 29(2))
Exercise of the power: Primarily vested in the national legislature.

3. Purposes:

(1) To raise revenue
(2) Instrument of national economic and social policy
(3) Tool for regulation
(4) The power to keep alive[228]

4. Tax

Taxes are enforced proportional contributions from persons and property levied by the law making body of the state by virtue of its sovereignty for the support of the government and all public needs. Justice Holmes said: "Taxes are what we pay for civilized society."

5. Public Purpose

It is fundamental in democratic governments that taxes may be levied for public purpose only. Without this element, a tax violates the due process clause and is invalid.[229] In *Planters Products, Inc. (PPI) v. Fertiphil Corp.*[230] the Court had occasion to review the validity of LOI 1465, a martial rule product, which imposed a ten peso capital contribution for the sale of each bag of fertilizer "until adequate capital is raised to make PPI viable." PPI was private corporation. Clearly, therefore, the imposition was for private benefit and not for a public purpose.

B. Limitations on Power of Taxation

1. Rule of taxation shall be **uniform** and **equitable**. Congress shall evolve a **progressive** system of taxation.
2. Charitable institutions, etc. and all lands, building and improvements actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation. (art. 6 §28(3))
3. All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. (art. 14 §4(3))
4. Law granting tax exemption shall be passed only with the concurrence of the majority of all the members of Congress. (art. 6 §29(4)

UNIFORM

Uniformity. Uniformity signifies geographical uniformity. A tax is uniform when it operates with the same force and effect in every place where the subject is found.

Uniformity in taxation v. Equality in taxation. Uniformity in taxation means that persons or things belonging to the same class shall be taxed at the same rate. It is distinguished from equality in taxation in that the latter requires the tax imposed to be determined on the basis of the value of the property.[231]

Tan v. del Rosario:
Uniformity means:
(1) the standards that are used therefor are substantial and not arbitrary;
(2) the categorization is germane to achieve the legislative purpose;
(3) the law applies, all things being equal, to both present and future conditions; and
(4) the classification applies equally well to all those belonging to the same class.

There is a difference between the homeless people and the middle class. The two social classes are differently situated in life. (Tolentino v. Sec. of Finance)

EQUITABLE

[227] Bernas Commentary, p 785 (2003 ed).
[228] Bernas Primer at 278 (2006 ed.)
[229] Sinco, Philippine Political Law, p 579 (1954ed).
[230] G.R. No. 166006, March 14, 2008.
[231] Cruz, Philippine Political Law, p. 168 (1995 ed).

The present constitution adds that the rule of taxation shall also be equitable, which means that the tax burden must be imposed according to the taxpayer's capacity to pay.[232]

Progressive system of taxation. The Congress shall evolve a progressive system of taxation. Tax system is progressive when the rate increases as the tax base increases.[233]

Reason for progressive system. The explicit mention of progressive taxation in the Constitution reflects the wish of the Commission that the legislature should use the power of taxation as an instrument for a more equitable distribution of wealth.

Directive not a judicially enforceable right. The directive to evolve a progressive system of taxation is addressed to Congress and not a judicially enforceable right. (Tolentino v. Sec. of Finance)

Indirect taxes. The Constitution does not prohibit the imposition of indirect taxes, which are regressive. The provision simply means that direct taxes are to be preferred and indirect taxes should be minimized as much as possible. It does not require Congress to avoid entirely indirect taxes. Otherwise, sales taxes, which are the oldest form of indirect taxes, will be prohibited. The mandate to Congress is not to prescribe but to evolve a progressive system of taxation. (Tolentino v. Sec. of Finance)

C. Delegation of power to tax

Conditions
Tariffs and Customs Code
Limitation imposed regarding the Flexible Tariff Clause

> Section 28
> (2) The Congress may by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions at it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

1. Conditions in the delegation of the power to tax:

(1) Delegation must be made by law
(2) The power granted is to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties and impost.
(3) The said power is to be exercised within specified limits and subject to such limitations and restrictions as the Congress may impose.
(4) The authorization of such power must be within the framework of the national development program of the Government.

2. Tariff and Customs Code, Flexible Tariff Clause

The President is given by the Tariff and Customs Code ample powers to adjust tariff rates.

Flexible Tariff Clause
The President may fix tariff rates, import and export quotas, etc. under TCC:

1) To increase, reduce or remove existing protective rates of import duty (including any necessary change in classification)
   - the existing rates may be increased or decreased to any level on one or several stages but in no case shall be higher than a maximum of 100% as valorem
2) To establish import quota or to ban imports of any commodity, as may be necessary
3) To impose an additional duty on all imports not exceeding 10% ad valorem whenever necessary

3. Limitation Imposed Regarding the Flexible Tariff Clause

1) Conduct by the Tariff Commission of an investigation in a public hearing
   - The Commissioner shall also hear the views and recommendations of any government office, agency or instrumentality concerned
   - The NEDA thereafter shall submits its recommendation to the President
2) The power of the President to increase or decrease the rates of import duty within the abovementioned limits fixed in the Code shall include the modification in the form of duty.
   - In such a case the corresponding ad valorem or specific equivalents of the duty with respect to the imports from the principal competing country for the most recent representative period shall be used as bases. (Sec 401 TCC)

D. Exempted from taxation

Exempted from taxation
Kind of tax exemption
"Exclusively", Meaning
Elements in determining a charitable institution
Reason for Requirement of Absolute Majority

> Section 28
> (3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques,

[232] Cruz, Philippine Political Law, p. 168 (1995 ed).
[233] Bernas Commentary, p 779 (2003 ed).

non-profit cemeteries and all lands, buildings, and improvement actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

1. Exempted:

(1) Charitable institutions
(2) Churches
(3) Parsonages or convents appurtenant to churches
(4) Mosques
(5) Non-profit cemeteries
(6) All lands, buildings, and improvement ***actually, directly and exclusively*** used for religious, charitable, or educational purpose shall be exempt from taxation.

2. Kind of tax exemption under 28(3)

The exemption created by Section 28 is only for taxes assessed as property taxes and not excise tax. (CIR v. CA)

3. "Exclusively"

The phrase "exclusively used for educational purposes" extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purpose. (Abra Valley College v. Aquino)

PCGG has no power to grant tax exemptions (Chavez v. PCGG)

4. Elements to be considered in determining whether an enterprise is a charitable institution/entity:

(1) Statute creating the enterprise
(2) Its corporate purposes
(3) Its constitution and by-laws
(4) Method of administration
(5) Nature of actual work performed
(6) Character of services rendered
(7) Indefiniteness of the beneficiaries
(8) Use and occupation of the properties (Lung Center v. QC)

Section 28
(4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

5. Reason for absolute majority

Bills ordinarily passed with support of only a simple majority, or a majority of those present and voting. The above provision requires an absolute majority of the entire membership of the Congress because a tax exemption represents a withholding of the power to tax and consequent loss of revenue to the government.

POWER OF APPROPRIATION/ SPENDING POWER

A. Spending Power

1. *Spending Power*
2. *Reason*
3. *"By Law"*

Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

1. Spending Power

The spending power of Congress is stated in Section 29(1): "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." (1988, 1992 Bar Question)

2. Reason

Behind the provision stands the principle that the people's treasure that the people's treasure may be sent only with their consent. That consent is to be expressed either in the Constitution itself or in valid acts of the legislature as the direct representative of the people.[234]

3. "By law"

The provision does not say "appropriation by Congress" but rather "by law", a term which covers both statutes and the Constitution.[235]

B. Appropriation

Appropriation
Classification
CDF

1. Appropriation

An appropriation measure may be defined as a statute the primary and specific purpose of which is to authorize the release of public funds from the treasury.[236] A law creating an office and providing funds therefore is not an appropriation law since the main purpose is not to appropriate funds but to create the office.[237]

2. Classification of Appropriation Measures:

(4) **General**- The general appropriations law passed annually is intended to provide for the financial operations of the entire government during one fiscal period.

[234] *See* Sinco, Philippine Political Law, p 208 (1954ed).
[235] Sinco, Philippine Political Law, p 211 (1954ed).
[236] Cruz, Philippine Political Law, p. 158 (1995 ed).
[237] Cruz, Philippine Political Law, p. 159 (1995 ed).

(5) **Special-** designed for a specific purpose such as the creation of a fund for the relief of typhoon victims.

CDF

A law creating CDF was upheld by the SC saying that the Congress itself has specified the uses of the fund and that the power given to Congressmen and Vice-President was merely recommendatory to the President who could approve or disapprove the recommendation. (PHILCONSA v. Enriquez)

C. Limitations on Appropriations

Extra-Constitutional Limitations
Constitutional Limitations

1. Extra-Constitutional Limitations

Implied Limitations
1. Appropriation must be devoted to a public purpose
2. The sum authorized must be determinate or at least determinable.[238]

2. Constitutional Limitations

Specific Limitations on the power of appropriation[239] [Sec 24, Sec 25(6)]
1. Appropriation bills should originate in the House of Representatives. (art. 6 sec 24)
2. Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law. (art. 6 sec 25(6)

Constitutional limitations on special appropriation measures [Sec 25(4), Sec 29(2)]
1. Must specify the public purpose for which the sum is intended. (art 6 sec 25 (4))
2. Must be supported by funds actually available as certified to by National Treasurer, or to be raised by a corresponding revenue proposal included therein. (art 6 sec 25(4))
3. Prohibition against appropriations for sectarian benefit. (art 6 sec 29(2))[240]

Constitutional rules on general appropriations law [Sec 25 (1)(2)(3)(5)(7), Sec 29(2)]
1. Congress may not increase the appropriations recommended by the President. (art 6 sec 25(1))
2. The form, content, and manner of preparation for the budget shall be prescribed by law. (art 6 sec 25(1))
3. Rule on riders. (art 6 sec 25(2))
4. Procedure for approving appropriations for Congress. (art 6 sec 25(3))
5. Prohibition against transfer of appropriations. (art 6 sec 25(5))
6. Rule on automatic reappropriation. (art 6 sec 25(7))
7. Prohibition against appropriations for sectarian benefit. (art 6 sec 29(2))

D. Non-establishment provision

> Section 29
> (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher or dignitary as such.

Public money may be paid to a priest, preacher, minister, or dignitary if he is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

General or specific appropriation. Whether the appropriation be general or specific, it must conform to the prohibition against the use of public funds or property for sectarian purposes.[241]

Purpose of the provision. This provision must be read with Article III, Section 5 on religious freedom and Article II, Section 6 on the separation of Church and State. Its purpose is to further bolster this principle and emphasize the neutrality of the State in ecclesiastical matters.

E. Special Fund

> Section 29
> (3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If

[238] Cruz, Philippine Political Law, p. 160 (1995 ed).
[239] Cruz, Philippine Political Law, p. 160 (1995 ed).
[240] *See* Cruz, Philippine Political Law, p. 164 (1995 ed).
[241] Cruz, Philippine Political Law, p. 164 (1995 ed.)

> the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

Tax levied for a special purpose. All money collected on any tax levied for a special purpose shall be treated as a special fund.

For such purpose only. All money collected on any tax levied for a special purpose shall be paid out for such purpose only.

Balance to the general funds. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

F. General Appropriation

Budget and Appropriation
Rule on Riders
Special Appropriations Bill
No Transfer of Appropriations
Discretionary Funds
Automatic Re-enactment

1. Budget and Appropriation

> **Section 25.** (1) The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

Budget. The budget is only a proposal, a set of recommendations on the appropriations to be made for the operations of the government. It is used as a basis for the enactment of the general appropriations law.[242]

The budget as a restriction on appropriations. The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.

Reason. The reason for the above provision is the theory that the President knows more about the needed appropriations than the legislature.[243] Being responsible for the proper administration of the executive department, the President is ordinarily the party best qualified to know the maximum amount that the operation of his department requires.[244]

Preparation of Budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

2. Rule on riders

> Section 25
> (2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

(2001 Bar Question)

Every provision or enactment in the general appropriations bill must relate specifically to some particular appropriation therein.

Every such provision or enactment shall be limited in its operation to the appropriation to which it relates

Purpose. To prevent riders or irrelevant provisions that are included in the general appropriations bill to ensure their approval.[245]

Procedure in approving appropriations for the Congress

> (3) The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

Same Procedure. The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

Reason. To prevent the adoption of appropriations *sub rosa* by the Congress.

3. Special Appropriations bill

> (4) A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised

[242] Cruz, Philippine Political Law, p. 161 (1995 ed.)
[243] Cruz, Philippine Political Law, p. 161 (1995 ed.)
[244] Sinco, Philippine Political Law, p 216 (1954ed).
[245] Cruz, Philippine Political Law, p. 162 (1995 ed.)

by a corresponding revenue proposal therein.

A special appropriations bill shall:
(1) Specify the purpose for which it is intended;
(2) Be supported by funds actually available as certified by the National Treasurer; or
(3) Be supported by funds to be raised by a corresponding revenue proposal therein.

4. No transfer of appropriations

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

(1998 Bar Question)

Prohibition of transfer. No law shall be passed authorizing any transfer of appropriations.

Reason. This provision prohibits one department from transferring some of its funds to another department and thereby make it beholden to the former to the detriment of the doctrine of separation of powers. Such transfers are also unsystematic, besides in effect disregarding the will of the legislature that enacted the appropriation measure.[246]

Augmentation of item from savings. The President, the Senate President, the House Speaker, the Chief Justice, and the heads of Constitutional Commission may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. In this case, there is no danger to the doctrine of separation of powers because the transfer is made *within* a department and not from one department to another.[247]

Exclusive list. The list of those who may be authorized to transfer funds under this provision is exclusive. However, members of the Congress may determine the necessity of realignment of the savings. (PHILCONSA v. Enriquez)

5. Discretionary funds

(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

Public Purpose. Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

Reason. This was thought necessary in view of the many abuses committed in the past in the use of discretionary funds. In many cases, these funds were spent for personal purposes, to the prejudice and often even without the knowledge of the public.[248]

6. Automatic Reenactment

(1998 Bar Question)

(7) If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress.

Reason. This is to address a situation where Congress fails to enact a new general appropriations act for the incoming fiscal year.

XIII. OTHER PROHIBITED MEASURES

Appellate Jurisdiction of Supreme Court
Title of Royalty and Nobility

A. Appellate Jurisdiction of Supreme Court

Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

Limitation on power of Congress. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

[246] Cruz, Philippine Political Law, p. 164 (1995 ed.)
[247] Cruz, Philippine Political Law, p. 164 (1995 ed.)
[248] Cruz, Philippine Political Law, p. 160 (1995 ed.)

SC's Advice and Concurrence Needed. The Congress may increase the appellate jurisdiction of the SC but only with its advice and concurrence.

Reason. To prevent further additions to the present tremendous case load of the Supreme Court which includes the backlog of the past decades.[249]

B. Titles of Royalty and Nobility

> **Section 31.** No law granting a title of royalty or nobility shall be enacted.

Reason. To preserve the republican and democratic nature of our society by prohibiting the creation of privileged classes with special perquisites not available to the rest of the citizenry.

XIV. INITIATIVE AND REFERENDUM

Initiative and Referendum
initiative
Referendum

> **Section 32.** The Congress shall as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters thereof.

1. Initiative and referendum

The Congress shall as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom.

Petition. A petition must be signed by at least 10% of the total number of registered voters, of which every legislative district must be represented by at least 3% of the registered voters thereof. The petition must then be registered.

RA 6735. The current implementing law is RA 6735, an Act Providing for System of Initiative and Referendum.

2. Initiative.

The power of the people to propose **amendments** to the Constitution or to propose and enact legislation.

Three systems of Initiative:

1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
2. Initiative on statutes which refers to a petition proposing to enact a national legislation.
3. Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance.

Local Initiative. Not less than 2,000 registered voters in case of autonomous regions, 1,000 in case of provinces and cities, 100 in case of municipalities, and 50 in case of barangays, may file a petition with the Regional Assembly or local legislative body, respectively, proposing the adoption, enactment, repeal, or amendment, of any law, ordinance or resolution. (Sec. 13 RA 6735)

Limitations on local initiative:

1. The power of local initiative shall not be exercised more than once a year;
2. Initiative shall extend only to subjects or matters which are within the legal matters which are within the legal powers of the local legislative bodies to enact;
3. If any time before the initiative is held, the local legislative body shall adopt *in toto* the proposition presented, the initiative shall be cancelled. However, those against such action may if they so desire, apply for intitiative.

> **Q:** Petitioners filed a petition with COMELEC to hold a plebiscite on their petition for an initiative to amend the Constitution by adopting a unicameral-parliamentary form of government and by providing for transitory provisions.
> **A**: An initiative to change the Constitution applies only to an amendment and not revision. Revision broadly implies a change that alters basic principle in the Constitution like altering the principle of separation of powers or the system of checks and balance. The initiative of the petitioners is a revision and not merely an amendment. (Lambino v. COMELEC)

3. Referendum

Power of the electorate to approve or reject legislation through an election called for the purpose.

Two Classes of Referendum

[249] Cruz, Philippine Political Law, p. 146 (1995 ed.)

1. Referendum on statutes which refers to a petition to approve or reject an act or la, or part thereof, passed by Congress;
2. Referendum on local laws which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies. (Sec. 2(c) RA 6735)

Prohibited Measures. The following cannot be subject of an initiative or referendum:

1. Petition embracing more than one subject shall be submitted to the electorate.
2. Statutes involving emergency measures, the enactment of which is specifically vested in Congress by the Constitution, cannot be subject to referendum until ninety(90) days after their effectivity. (Sec. 10 RA 6735)

Q: Is the People Power recognized in the Constitution? (1987, 2000 and 2003 Bar Examinations)

A: "People power" is recognized in the Constitution, Article III, Section 4 of the 1987 Constitution guarantees the right of the people peaceable to assemble and petition the government for redress of grievances. Article VI, Section 32 of the 1987 Constitution requires Congress to pass a law allowing the people to directly propose or reject any act or law or part of it passed by congress or a local legislative body. Article XIII, Section 16 of the 1987 Constitution provides that the right of the people and their organizations to participate in all levels of social, political, and economic decision-making shall not be abridged and that the State shall, by law, facilitate the establishment of adequate consultation mechanisms. Article XVII, Section 2 of the 1987 Constitution provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative.

EXECUTIVE DEPARTMENT

I. EXECUTIVE POWER

Executive Power, (Definition)
Scope
Where Vested
Ceremonial Functions
Executive Immunity
Executive Privilege
Cabinet

> **Section 1.** The Executive power shall be vested in the President of the Philippines

A. Executive Power (Definition)

The executive power is the power to enforce and administer the laws.[250] (NEA v. CA, 2002)

B. Executive Power, Scope

1. The scope of power is set forth in the Constitution specifically in Article VII.

2. However, Executive power is more than the sum of specific powers enumerated in the Constitution. It includes **residual powers**[251] not specifically mentioned in the Constitution. (Marcos v. Manglapus (1989)

   > The prosecution of crimes appertains to the Executive Department, whose responsibility is to see the laws are faithfully executed. (Webb v. De Leon)[252]

3. BUT the President cannot dispose of State property unless authorized by law.[253]
4. Enforcement and administration of election laws is the authority of the COMELEC.[254]

C. Executive Power, Where Vested

The Executive power shall be vested in the **President** of the Philippines.

D. Ceremonial Functions (Head of State)

In a presidential system, the presidency includes many other functions than just being executive. The president is the [symbolic and] ceremonial head of the government of the [Philippines].[255]

E. Executive Immunity from suit

Rules on Immunity during tenure

1. The President is immune from suit during his tenure.[256]

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[250] Justice Irene Cortes in the case of *Marcos v. Manglapus (1989)* opines: "*It would be inaccurate… to state that 'executive power' is the power to enforce laws, for the President is head of State as well as head of government and whatever power inhere in such positions pertain to the office unless the Constitution itself withholds it*."

M.T., in his attempt to provide a comprehensive interpretation of executive power provides:
"*Executive power refers to the power of the President:*
(a) to execute and administer laws (b) power enumerated in the Constitution (c) those powers that inhere to the President as head of state and head of government, and (d) residual powers."
"Executive power refers to the totality of the President's power."

According to Sinco, "*Executive power refers to the legal and political functions of the President involving the exercise of discretion.* (Philippine Political Law, p.242 (1954 ed.)

[251] Residual Powers are those which are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare.

[252] *See* Jacinto Jimenez, Political Law Compendium p.306 (2005 ed.)

[253] *See* Laurel v. Garcia (Roponggi Case)

[254] Cruz, Philippine Political Law, p. 308 (1995 ed).

[255] *See* Bernas Commentary, p 800 (2003 ed).

[256] The incumbent President is immune from suit or from being brought to court during the period of their incumbency and tenure. (In re Saturnino Bermudez,1986)
"The President during his tenure of office or actual incumbency, may not be sued in ANY civil or criminal case. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such." (David v. [Ermita])
Article VII, Section 17 (1st Sentence) of the 1973 Constitution provides: "The President shall be immune from suit during his tenure." The immunity granted by the 1st sentence while the President was in office was absolute. The intent was to give the President absolute immunity even for wrongdoing committed during his tenure. (Bernas, Philippine Political Law, 1984) Although the new

2. He may be filed impeachment complaint during his tenure. (Article XI)
3. The President may not be prevented from instituting suit (Soliven v. Makasiar)
4. There is nothing in our laws that would prevent the President from waiving the privilege. The President may shed the protection afforded by the privilege. (Soliven v. Makasiar)
5. Heads of departments cannot invoke the presidents' immunity (Gloria v. CA)

Rules on Immunity after tenure

6. Once out of office, even before the end of the six year term, immunity for non-official acts is lost. Such was the case of Joseph Estrada. (*See* Bernas Commentary, p 804 (2003 ed.) It could not be used to shield a non-sitting President from prosecution for alleged criminal acts done while sitting in office. (Estrada v. Disierto; See Romualdez v. Sandiganbayan)

Note: In David v. Arroyo, the Court held that it is improper to implead President Arroyo as respondent. However, it is well to note that in ***Rubrico v. Arroyo,*** Min. Res., GR No, 180054, October 31, 2007, the Supreme Court ordered the respondents, including President Arroyo, to make a return of the writ: "*You, respondents President Macapagal Arroyo….are hereby required to make a return of the writ before the Court of Appeals…"*

Reasons for the Privilege:

1. **Separation of powers.** The separation of powers principle is viewed as demanding the executive's independence from the judiciary, so that the President should not be subject to the judiciary's whim.[257]
2. **Public convenience.** By reason of public convenience, the grant is to assure the exercise of presidential duties and functions free from any hindrance or distraction, considering that the Chief Executive is a job that, aside from requiring all of the office-holder's time, also demands undivided attention *(Soliven v. Makasiar*)

F. Executive Privilege

Definition
How Invoked
Who may invoke
Privilege Not Absolute
Types of Executive Privilege (Neri v. Senate)
Variety of Executive Privilege (Senate v. Ermita)
Kinds of Executive Privilege (Neri v. Senate)
Elements of Presidential Communications Privilege
Presidential Communications are Presumptively Privileged
Executive Privilege v. Public Interest
Power of Inquiry v. Executive Privilege
Case Digest of Neri v. Senate

1) Definition

Briefly and in simplest terms, it is the power of the President to withhold certain types of information from the public, from the courts, and from Congress.

2) How invoked

Invoked in relation to specific categories of information. Executive privilege is properly invoked in relation to specific categories of information and not to categories of persons. (While executive privilege is a constitutional concept, a **claim** thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. (Senate v. Ermita)

3) Who can invoke

In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the **President** the power to invoke the privilege. She may of course authorize the **Executive Secretary** to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is "By order of the President," which means that he personally consulted with her. The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. (Senate v. Ermita) (It follows, therefore, that when an official is being summoned by Congress on a matter which, in his own judgment, might be covered by executive privilege, he must be afforded **reasonable time to inform the President or the Executive Secretary** of the possible need for invoking the privilege. This is necessary in order to provide the President or the Executive Secretary with fair opportunity to consider whether the matter indeed calls for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance.) (Senate v. Ermita)

4) Privilege Not Absolute

Claim of executive privilege is subject to **balancing against other interest.** In other words, confidentiality in executive privilege is not absolutely protected by the Constitution. Neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications,

Constitution has not reproduced the explicit guarantee of presidential immunity from suit under the 1973 Constitution, presidential immunity during tenure remains as part of the law.
(*See* Bernas Commentary, p 804 (2003 ed.)

[257] *See* Almonte v. Vasquez

without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. (Neri v. Senate)
A claim of executive privilege does not guard against a possible disclosure of a crime or wrongdoing (Neri v. Senate)

5) Types of Executive Privilege[258]

1. State secrets (regarding military, diplomatic and other security matters)
2. Identity of government informers
3. Information related to pending investigations
4. Presidential communications
5. Deliberative process

6) Variety of Executive Privilege according to Tribe (Tribe cited in Senate v. Ermita)

1.State Secrets Privilege. that the information is of such nature that its disclosure would subvert crucial military or diplomatic objectives;
(2)Informer's privilege. Privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law.
(3) General Privilege. For internal deliberations. Said to attach to intragovernmental documents reflecting advisory opinions, recommnendations and deliberations comprising part of a process by which governmental decisions and policies formulated.

7) Two Kinds of Privilege under *In re: Sealed Case (Neri v. Senate)*

1. Presidential Communications Privilege
2. Deliberative Process Privilege

Presidential Communications Privilege	Deliberative Process Privilege
Pertains to communications, documents or other materials that reflect presidential decision making and deliberations that the President believes should remain confidential	Includes advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated
Applies to decision making of the President	Applies to decision making of executive officials
Rooted in the constitutional principle of separation of powers and the President's unique constitutional role	Rooted on common law privileges
Applies to documents in their entirety and covers final and post decisional materials as well as pre-deliberative ones	

8) Elements of presidential communications privilege *(Neri v. Senate)*

1) The protected communication must relate to a "quintessential and non-delegable presidential power."
2) The communication must be authored or "solicited and received" by a close advisor of the President or the President himself. The judicial test is that an advisor must be in "operational proximity" with the President.
3) The presidential communications privilege remains a qualified privilege that may be overcome by a showing of adequate need, such that the information sought "likely contains important evidence" and by the unavailability of the information elsewhere by an appropriate investigating authority.

9) Presidential Communications are Presumptively Privileged

The presumption is based on the President's generalized interest in confidentiality. The privilege is necessary to guarantee the candor of presidential advisors and **to provide the President and those who assist him** with freedom to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.
The presumption can be overcome only by mere showing of public need by the branch seeking access to conversations. The courts are enjoined to resolve the competing interests of the political branches of the government "in the manner that preserves the essential functions of each Branch."

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10) Executive Privilege and the Public

The Court held that this jurisdiction recognizes the common law holding that there is a "governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters and cabinet closed door meetings." (Chavez v. PCGG)

11) Power of Inquiry v. Executive Privilege

Requirement in invoking the privilege: formal claim of privilege. "Congress has undoubtedly has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, **it must so assert it**

[258] Primer on Neri v. Senate made by Atty. Carlos Medina.

and state the reason therefore and why it must be respected." (Justice Carpio Morales in *Senate v. Ermita*)

A formal and proper claim of executive privilege requires **a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality.** Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected. Upon the other hand, Congress must not require the executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect. (Senate v. Ermita)

12) Neri v. Senate Committee

Background:
This case is about the Senate investigation of anomalies concerning the NBN-ZTE project. During the hearings, former NEDA head Romulo Neri refused to answer certain questions involving his conversations with President Arroyo on the ground they are covered by executive privilege. When the Senate cited him in contempt and ordered his arrest, Neri filed a case against the Senate with the Supreme Court. *On March 25, 2008, the Supreme Court ruled in favor of Neri and upheld the claim of executive privilege.*

Issues:
(1) . Are the communications sought to be elicited by the three questions covered by executive privilege?
(2) Did the Senate Committees commit grave abuse of discretion in citing Neri in contempt and ordering his arrest?

Ruling:
(1) The SC said that the communications sought to be elicited by the three questions are covered by the presidential communications privilege, which is one type of executive privilege.

Using the elements of *presidential communications privilege*, the SC is convinced that the communications elicited by the three (3) questions are covered by the **presidential communications privilege**.

First, the communications relate to a "quintessential and non-delegable power" of the President, i.e. the power to enter into an executive agreement with other countries. This authority of the President to enter into *executive agreements* without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence.

Second, the communications are "received" by a close advisor of the President. Under the "operational proximity" test, petitioner can be considered a close advisor, being a member of President Arroyo's cabinet.

Third, there is no adequate showing of a compelling need that would justify the limitation of the privilege and of the **unavailability** of the information elsewhere by an appropriate investigating authority. The record is bereft of any categorical explanation from respondent Committees to show a compelling or critical need for the answers to the three (3) questions in the enactment of a law.

(2) Yes. The Supreme Court said that the Senate Committees committed grave abuse of discretion in citing Neri in contempt. The following reason among others was given by the Supreme Court:

a. **There was a legitimate claim of executive privilege.**

For the claim to be properly invoked, there must be a formal claim by the President stating the "precise and certain reason" for preserving confidentiality. The grounds relied upon by Executive Secretary Ermita are specific enough, since what is required is only that an allegation be made "whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc." The particular ground must only be specified, and the following statement of grounds by Executive Secretary Ermita satisfies the requirement: "The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China."

Comments on *Neri v. Senate*

Atty Medina: The ruling expands the area of information that is not accessible to the public. Executive privilege can now be invoked in communications between his close advisors. (See the second element in the *presidential communications privilege)*

Bernas: The problem with the doctrine is, anytime the President says "*That's covered"*, that's it. Nobody can ask anymore questions.

ASM: I think when the President says, "It's covered," the Court can still make an inquiry under the Grave Abuse Clause. This inquiry can be done in an executive session.

G. Cabinet

Extra-constitutional creation
Composition
Prohibitions
Vice-President
Ex-officio Capacity
Prohibited Employment
Prohibited Compensation

1. Extra-constitutional creation

Although the Constitution mentions the Cabinet a number of times, the Cabinet itself as an institution is extra-constitutionally created. [259]

2. Composition

It is essentially consist of the heads of departments who through usage have formed a body of presidential adviser who meet regularly with the President.[260]

3. Prohibitions (1987, 1996 Bar Question)

(A*pplies to Members of Cabinet, their deputies or assistants.)*

1. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.

[259] Bernas Commentary, p 808 (2003 ed).; *See* art.7 secs. 3, 11 and 13.
[260] Bernas Commentary, p 808 (2003 ed).

2. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.
3. Strictly avoid conflict of interest in the conduct of their office during their tenure. (Section 13)

4. Vice-President

Note that the VP may be appointed to the Cabinet, without need of confirmation by the Commission on Appointments; and the Secretary of Justice is an *ex officio* member of the Judicial and Bar Council.

5. Ex-officio[261] capacity (2002 Bar Question)

The prohibition must not be construed as applying to posts occupied by the Executive officials without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary functions of the said official's office. The reason is that the posts do not comprise "any other office" within the contemplation of the constitutional prohibition, but properly an imposition of additional duties and functions on said officials.
To illustrate, the Secretary of Transportation and Communications is the *ex officio* Chirman of the Board of Philippine Ports Authority. The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in said position. The reason is that these services are already paid for and covered by the compensation attached to the principal office. (National Amnesty Commission v. COA, 2004)

6. Prohibited Employment

Since the Chief Presidential Legal Counsel has the duty of giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and to review investigations involving other presidential appointees, he may not occupy a position in any of the offices whose performance he must review. It would involve occupying incompatible positions. Thus he cannot be Chairman at the same time of the PCGG since the PCGG answers to the President.[262]

7. Prohibited Compensation

When an Undersecretary sits for a Secretary in a function from which the Secretary may not receive additional compensation, the prohibition on the Secretary also applies t the Undersecretary.[263]

II. The President

Who is he?
Qualifications
Election
Term of Office
Oath of Office
Privileges
Prohibitions/Inhibitions
Vacancy Situations
Rules of Succession
Temporary Disability
Serious Illness
Removal from Office

A. Who is the President

The President is the Head of State and the Chief Executive.[264] (He is *the executive)* He is the repository of all executive power.[265]

B. Qualifications

Qualifications
Reason for Qualifications
Qualifications are exclusive
Natural Born
Registered Voter
Age
Registered Qualification

> **Section 2.** No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

1. Qualifications

1. Natural born citizen of the Phils.
2. Registered voter
3. Able to read write
4. At least 40 years of age o the day of the election
5. A resident of the Philippines for at least 10 years immediately preceding the election.

[261] An ex-oficio position is one which an official holds but is germane to the nature of the original position. It is by virtue of the original position that he holds the latter, therefore such is constitutional.
[262] *Public Interest Group v Elma,* G. R. No. 138965, June 30, 2006.
[263] *Bitonio v. COA,* G.R. No. 147392, March 12, 2004.
[264] Bernas Primer at 289 (2006 ed.)
[265] Sinco, Philippine Political Law, p.240 (1954 ed.)

2. Reason for Qualifications

Qualifications are prescribed for public office to ensure the proper performance of powers and duties.[266]

3. Qualifications are exclusive

The above qualifications are exclusive and may not be reduced or increased by Congress. The applicable rule of interpretation is *expression unius est exclusio alterius.*[267]

4. Natural Born

One who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship. (Article IV, Section 2)

An illegitimate child of an American mother and a Filipino father is a natural born Filipino citizen if paternity is clearly proved. Hence such person would be qualified to run for President. This was the case of Fernando Poe, Jr. (Tecson v. COMELEC)

5. Registered Voter

Possession of the qualifications for suffrage as enumerated in Article V, Section 1.

6. Age

The age qualification must be possessed "on the day of the election for President" that is, on the day set by law on which the votes are cast.[268]

7. Residence Qualification

The object being to ensure close touch by the President with the country of which he is to be the highest official and familiarity with its conditions and problems, the better for him to discharge his duties effectively.[269]

C. Election

Regular Election
Special Election
Congress as Canvassing Board
Who will be Proclaimed
Presidential Electoral Tribunal

> **Section 4.** The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.
> No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.
> Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.
> The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.
> The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.
> The Congress shall promulgate its rules for the canvassing of the certificates.
> The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

1. Regular Election

The President (and Vice-President) shall be elected by **direct vote** of the people. Unless otherwise provided by law, the regular election for President (and Vice-President) shall be held on the **second Monday of May**.

2. Special Election (*Discussed under Section 10)*

3. Congress as Canvassing Board

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in

[266] Cruz, Philippine Political Law, p. 174 (1995 ed).
[267] Cruz, Philippine Political Law, p. 174 (1995 ed).
[268] Bernas Commentary, p 809 (2003 ed).
[269] Cruz, Philippine Political Law, p. 175 (1995 ed).

joint public session, and **the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, *canvass* the votes**. The Congress shall promulgate its rules for the canvassing of the certificates.

Is the function of Congress merely ministerial?
Bernas: The function of Congress is not merely ministerial. It has authority to examine the certificates of canvass for authenticity and due execution. For this purpose, Congress must pass a law governing their canvassing of votes.[270]
Cruz: As the canvass is regarded merely as a ministerial function, the Congress shall not have the power to inquire into or decide questions of alleged irregularities in the conduct of the election contest. Normally, as long as the election returns are duly certified and appear to be authentic, the Congress shall have no duty but to canvass the same and to proclaim as elected the person receiving the highest number of votes.[271]
Justice Carpio Morales: This duty has been characterized as being ministerial and executive.[272]

Validity of Joint Congressional Committee. Congress may validly delegate the initial determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee so long as the decisions and final report of the said Committee shall be subject to the approval of the joint session of Both Houses of Congress voting separately. (Lopez v. Senate, 2004)

COMELEC. There is no constitutional or statutory basis for COMELEC to undertake a separate and "unofficial" tabulation of result whether manually or electronically. If Comelec is proscribed from conducting an official canvass of the votes cast for the President and Vice-President, the Comelec is, with more reason, prohibited from making an "unofficial" canvass of said votes. (Brilantes v. Comelec, 2004)

The proclamation of presidential and vice-presidential winners is a function of Congress and not of Comelec (Macalintal v. COMELEC)

Congress may continue the canvass even after the final adjournment of its session. The final adjournment of Congress does not terminate an unfinished presidential canvass. Adjournment terminates legislation but not the **non-legislative functions of Congress such as canvassing of votes**. (Pimentel v. Joint Committee of Congress, 2004)

4. Who will be proclaimed

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

5. Presidential Electoral Tribunal

The Supreme Court, sitting en banc, shall be the **sole judge** of all *contests* relating to the *election, returns, and qualifications* of the President or Vice-President, and may promulgate its rules for the purpose.

Q: Can Susan Roces, widow of Fernando Poe. Jr, intervene and/or substitute for him, assuming arguendo that the protest could survive his death?
A: No. The fundamental rule applicable in a presidential election protest is Rule 14 of the PET Rules. It provides that only the 2nd and 3rd placer may contest the election. The Rule effectively excludes the widow of a losing candidate.[273] (Fernando Poe v. Arroyo)

The validity, authenticity and correctness of the SOVs and COCs are under the Tribunal's jurisdiction. The constitutional function as well as the power and the duty to be the sole judge of all contests relating to election, returns and qualification of President and Vice-President is expressly vested in the PET in Section 4 Article VII of the Constitution. Included therein is the duty to correct manifest errors in the SOVs and COCs. (Legarda v. De Castro, 2005)

Q: After Fidel Ramos was declared President, defeated candidate Miriam Defensor Santiago filed an election protest with the SC. Subsequently, while the case is pending, she ran for the office of Senator and, having been declared elected, assumed office as Senator. What happens to her election protest?
A: Her protest is deemed abandoned with her election and assumption of office as Senator. (Defensor Santiago v. Ramos)

D. Term of Office

[270] Bernas Primer at 293 (2006 ed.)

[271] Cruz, Philippine Political Law, p. 176 (1995 ed).

[272] Separate Opinion of Justice Carpio Morales in **Pimentel v. Joint Committee** (June 22, 2004) citing *Lopez v. Roxas*, 17 SCRA 756, 769 (1966)

[273] *Fernando Poe, Jr. v. Arroyo,* P.E.T. CASE No. 002. March 29, 2005.

6 years. The President (and the Vice-President) shall be elected by direct vote of the people for a term of six years.

Noon of June 30. Term hall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter.

No re-election. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

Reason for prohibition on any reelection for Presidency. It was thought that the elimination of the prospect of reelection would make for a more independent President capable of making correct even unpopular decisions.[274] He is expected to devote his attention during his lone term to the proper discharge of his office instead of using its perquisites to ensure his remaining therein for another term.[275]

E. Oath of Office

> **Section 5**. Before they enter on the execution of their office, the President, the Vice-President, or the Acting President shall take the following oath or affirmation:
> "*I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God*."
> (In case of affirmation, last sentence will be omitted.)

Oath. The oath is not a source of substantive power but is merely intended to deepen the sense of responsibility of the President and ensure a more conscientious discharge of his office.[276]

F. Privileges

1. Official Residence
2. Salary
3. Immunity from suit

> **Section 6**. The President shall have an official residence. The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved. They shall not receive during their tenure any other emolument from the Government or any other source.

1. Official Residence

The President shall have an official residence.

2. Salary

The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure.
The initial salary of the President is 300,00 per year. (Article XVIII Section 17)
No increase during their *term*. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved.
No additional emolument during their *tenure.* They shall not receive during their tenure any other emolument from the Government or any other source.

3. Immunity from Suit

(*Discussed under Section 1 [I(E)]*)

G. Prohibitions/Inhibitions

> **Section 13**. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.
> The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or a Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Prohibitions:

1. Shall not receive increase compensation during the term of the incumbent during which such increase was approved. (sec 6)

[274] Bernas Commentary, p 812 (2003 ed).
[275] Cruz, Philippine Political Law, p. 177 (1995 ed).
[276] Cruz, Philippine Political Law, p. 183 (1995 ed).

2. Shall not receive any other emoluments from the government or any other source during their tenure. (sec 6)
3. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.
4. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.
5. Strictly avoid conflict of interest in the conduct of their office during their tenure.
6. May not appoint spouse or relatives by consanguinity or affinity within the fourth civil degree as Member of Constitutional Commissions or the Office of the Ombudsman, or as Secretaries, Under Secretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Note: Nos. 1-6 above applies to the President. 1-5 applies to the Vice-President. 3-5 applies to Members of Cabinet, their deputies or assistants.

Prohibition against increase of compensation during tenure. The prohibition against the change of their salary either by reduction or increase during their term is meant to prevent the legislature from "weakening the fortitude by appealing to their avarice or corrupting their integrity by operating on their necessities. [277]

Emoluments. The emoluments which they may not receive during their tenure from the government or any other source (that is, private) refers to any compensation received for services rendered or form possession of an office. This means that the President cannot accept other employment elsewhere, whether in the government or in the private sector, and must confine himself to the duties of his office.[278]

Reason for Inhibitions under Section 13. The inhibitions are in line with the principle that a public office is a public trust and should not be abused for personal advantage. Officers mention under Section 13 (except the VP who may be appointed to the Cabinet) are inhibited from holding any other office or employment in the government during their tenure. This will discontinue the lucrative practice of Cabinet members occupying seats in the boards of directors of affluent corporations owned or controlled by the government from which they derived substantial income in addition to their regular salaries. The second paragraph of Section 13 is intended as a guarantee against nepotism.[279]

[277] Cruz, Philippine Political Law, p. 183 (1995 ed).

[278] Cruz, Philippine Political Law, p. 183 (1995 ed).

H. Vacancy

Section 7. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.
If the President-elect fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified.
If a President shall not have been chosen, the Vice-President-elect shall act as President until a President shall have been chosen and qualified.
If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the Vice-President-elect shall become President.
Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified.
The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

Section 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.
The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

Section 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be

[279] Cruz, Philippine Political Law, p. 185 (1995 ed).

charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

Vacancy Situations:

1. Vacancy that occurs at the start of the term (Sec 7)
2. Vacancy that occurs in mid-term (Sec 8)
3. Vacancy in both the presidency and vice-presidency. (Section 10)

Vacancy Situations under Section 7:
(The vacancy situations here occur after the office has been initially filled.)

1. When a President has been chosen but fails to qualify at the beginning of his term
2. When no President has yet been chosen at the time he is supposed to assume office.
3. When the President-elect dies or is permanently incapacitated before the beginning of his term
4. When both the President and Vice-President have not yet been chosen or have failed to qualify
5. When both shall have died or become permanently incapacitated at the start of the term.
6. When the Senate President and the Speaker of the House shall have died or shall have become permanently incapacitated, or are unable to assume office.

Vacancy Situation under Section 8
(*Vacancy that occurs in mid-term)*

1. When the incumbent President dies or is permanently disabled, is removed or resigns.
2. When both the President and the Vice-President die, or are permanently disabled, are removed, or resign.
3. When the Acting President dies, or is permanently incapacitated, is removed or resigns.

I. Rules of Succession

Section 7

Reason for Vacancy	Succession
1. When a President has been chosen but fails to qualify at the beginning of his term 2. When no President has yet been chosen at the time he is supposed to assume office.	The Vice-President becomes acting President until a President qualifies
3. When the President-elect dies or is permanently incapacitated before the beginning of his term	Vice-President elect becomes President
4. When both the President and Vice-President have not yet been chosen or have failed to qualify 5. When both shall have died or become permanently incapacitated at the start of the term.	The Senate President or the Speaker- in that order- acts as President until a President or Vice-President qualifies.
6. When the Senate President and the Speaker of the House shall have died or shall have become permanently incapacitated, or are unable to assume office.	Congress will decide by law who will act as President until a President or Vice-President shall have been elected and qualified.

Section 8

Reason for Vacancy	Succession
1. When the incumbent President dies or is permanently disabled, is removed or resigns.	The vacancy created is thus permanent. The Vice-President becomes President.
2. When both the President and the Vice-President die, or are permanently disabled, are removed, or resign.	The Senate President or the Speaker-in that order- shall act as President until a President of Vice-President shall have been qualified.
3. When the Acting President dies, or is permanently incapacitated, is removed or resigns.	Congress will determine by law who will act as President until a new President or Vice-President shall have qualified.

Resignation. In *Estrada v. Macapagal-Arroyo*, the SC through Justice Puno (**main opinion**) declared that the resignation of President Estrada could not be doubted as confirmed by his leaving Malacanang. The SC declared that the elements of a valid resignation are (1) intent to resign; and (2) act of relinquishment. Both were present when President Estrada left the Palace. Justice Puno anchored his opinion mainly on the letter of Estrada and on the diary of ES Edgardo Angara.

Permanent Disability. In *Estrada v. Macapagal-Arroyo*, Justice Bellosillo anchored his concurrence on permanent disability. He opined that permanent disability as contemplated by the Constitution does not refer only to physical or mental incapacity, but must likewise cover other *forms of incapacities of a permanent nature,* e.g. ***functional disability.***
He views Estrada's disability in (a) objective and (b) subjective perspectives.
Objective Approach. "Without people, an effectively functioning cabinet, the military and the police, with no recognition from Congress and the international

community, [Estrada] had absolutely no support from and control of the bureaucracy from within and from without. In fact he had no more functioning government to speak of. It is in this context that [Estrada] was deemed absolutely unable to exercise or discharge the powers, duties and prerogatives of the Presidency.
Subjective Approach. [Estrada's] contemporaneous acts and statements during and after the critical episode are eloquent proofs of his implied-but nevertheless unequivocal-acknowledgment of the permanence of his disability.

Comment on Estrada v. Macapagal-Arroyo
Bernas: In sum, 3 justices (Puno, Vitug and Pardo) accepted some form of resignation; 2 jsutices (Mendoza and Bellosillo) saw permanent disability; 3 justices (Kapuna, Yners Santiago and Sandoval-Gutierrez) accepted the presidency of Arroyo as an irreversible fact. 5 justices (Quisumbing, Melo, Buena, De Leon and gonzaga-Reyes) signed the decision without expressing any opinion. Davide and Panganiban abstained. In the light of all this, **it is not clear what doctrine was established by the decision.**[280]

When the Senate President or Speaker becomes Acting President, he does not lose the Senate presidency or the speakership.[281]

Section 10
Call not needed. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call.
Bill deemed certified. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article V1 of this Constitution and shall become law upon its approval on third reading by the Congress.

Appropriations. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article V1 of this Constitution.

No suspension or postponement. The convening of the Congress cannot be suspended nor the special election postponed.

No special elections. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

J. Temporary Disability

> **Section 11**. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.
> Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.
> Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.
> If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice- President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office.

K. Serious Illness

> Section 12. In case of serious illness of the President, the public shall be informed of the state of his health. The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Section 12 envisions not just illness which incapacitates but also any serious illness which can be a matter of national concern.[282]

Reason for informing the public. To guarantee the people's right to know about the state of President's health, contrary to secretive practice in totalitarian regimes.[283]

[280] Bernas Commentary, p 827 (2003 ed).

[281] Bernas Primer at 298 (2006 ed.)

[282] Bernas Primer at 300 (2006 ed.)

Who has the duty to inform? The section does not specify the officer on whom the duty devolves. It is understood that the Office of the President would be responsible for making the disclosure.

Reason of the access. To allow the President to make the important decisions in those areas of government.[284]

L. Removal from Office

Ways of removal from office:
1. By Impeachment
2. By People Power
3. By Killing the President (e.g. Assassination)[285]

(Number 2 is extra constitutional and Number 3 is illegal. –asm). (But for purposes of examinations, answer number 1 only)

(Impeachment will be discussed under Article XI)

III. The Vice- President

Who is the Vice-President
Qualifications, Election, Term of Office
Oath of Office
Prohibitions/Inhibitions
Vacancy
Removal from Office
Appointment to Cabinet

A. Who is the Vice-President

His function is to be on hand to act as President when needed or to succeed to the presidency in case of a permanent vacancy in the office. The President may also appoint him as a Member of the Cabinet. Such appointment does not need the consent of the Commission on Appointments.[286]

B. Qualifications, Election, Term of Office

> **Section 3**. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. xxx

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected. (Section 4)

C. Oath of Office

Same as the President. See Section 5.

D. Prohibitions and Inhibitions

1. Shall not receive increase compensation during the term of the incumbent during which such increase was approved. (sec 6)
2. Shall not receive any other emoluments from the government or any other source during their tenure. (sec 6)
3. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.
4. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.
5. Strictly avoid conflict of interest in the conduct of their office during their tenure. (Section 13)

E. Vacancy in the Vice-Presidency

> **Section 9.** Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.

F. Removal from Office

He may be removed from office in the same manner as the President. (Section 3)

F. Appointment to Cabinet

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation. (Section 3)

Justice Cruz submits that the Vice-President may not receive additional compensation as member of Cabinet because of the absolute prohibition in Section 3 of Article VII.[287]

IV. POWERS OF THE PRESIDENT

Constitutional Powers of the President
1. Executive Power
2. Power of Appointment
3. Power of Control

[283] Bernas Commentary, p 832 (2003 ed).

[284] Bernas Commentary, p 832 (2003 ed).

[285] Number 2 is extra constitutional and Number 3 is illegal. -asm

[286] Bernas Primer at 291 (2006 ed.)

[287] Cruz, Philippine Political Law, p. 183 (1995 ed).

4. Military Powers
5. Pardoning Power
6. Borrowing Power
7. Diplomatic Power
8. Budgetary Power
9. Informing Power
10. Other Powers
    a. Call Congress to a Special Session (art 6, sec 15)
    b. Power to approve or veto bills (art 6 sec 27)
    c. To consent to deputation of government personnel by the Commission on Elections (art 19-C sec 2(4))
    d. To discipline such deputies (art 19-C sec 2(8))
    e. Emergency powers by delegation from Congress (art 6 sec 23(2))
    f. Tariff Powers by delegation from Congress (art 6 sec 28(2))
    g. General Supervision over local governments and autonomous regional governments (art 10)

V. Power of Appointment

Definition of Appointment
Nature of Power of Appointment
Classification of Appointment
Kinds of Presidential Appointment
Scope of Appointing Power
Appointments needing Confirmation of CA
Officials Who are to be Appointed by the President
Steps in the Appointing Process
Appointment of Officers Lower in Rank
Limitations on the President's Appointing power
Power of Removal

> **Section 16**. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.
> The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

A. Definition of Appointment

Definition of Appointment. Appointment is the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office.[288]

It is distinguished from ***designation*** in that the latter simply means the imposition of additional duties, usually by law, on a person already in the public service.

It is also different from the ***commission*** in that the latter is the written evidence of the appointment.

B. Nature of Power of Appointment

1. Executive in Nature
2. Non-delegability
3. Necessity of Discretion

1. Executive in Nature

Appointing power is executive in nature. (Government v. Springer) Indeed, the filling up of an office created by law is the implementation or execution of law.[289]

Although, intrinsically executive and therefore pertaining mainly to the President, the appointing power may be exercised by the legislature and by the judiciary, as well as the Constitutional Commissions, over their own respective personnel (*See* art 6 sec 16 (last sentence), Article VIII etc.)

Implication. Since appointment to office is an executive function, the clear implication is that the legislature may not usurp such function.

The legislature may create an office and prescribe the qualifications of the person who may hold the office, but it may neither specify who shall be appointed to such office nor actually appoint him.[290]

2. Non-delegability.

Facts: The Minister of Tourism designate petitioner as general manager of the Philippine Tourism Authority. When a new Secretary of Tourism was appointed, the President designated [him] as a general manager of the PTA on the ground that the designation of petitioner was invalid since it is not made by the President as provided for in PD 564. Petitioner claimed that his removal was without just cause.

Held: The appointment or designation of petitioner by the Minister of Tourism is invalid. It involves the exercise of discretion, which cannot be delegated. Even if it be assumed that the power could be exercised by the Minister of Tourism, it could be recalled by the President, for the designation was provisional.[291] (Binamira v. Garrucho)

3. Necessity of Discretion

Discretion is an indispensable part in the exercise of power of appointment. Congress may not, therefore, enact a statute which would deprive the President of the full use of his discretion in the nomination and appointment of persons to any public office. Thus it has been held that a statute

[288] Cruz, Philippine Political Law, p. 189 (1995 ed).

[289] Bernas Commentary, p 839 (2003 ed).

[290] Bernas Primer at 305 (2006 ed.)

[291] Jacinto Jimenez, Political Law Compendium, p.313 (2006 ed.)

unlawfully limits executive discretion in appointments when it provides for the drawing of lots as a means to determine the districts to which judges of first instance should be assigned by the Chief Executive.[292] Congress may not limit the President's choice to one because it will be an encroachment on the Prerogative of the President.[293]

Appointment is essentially a discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee, if issued a permanent appointment, should possess the minimum qualification requirements, including the Civil Service eligibility prescribed by law for the position. This discretion also includes the determination of the nature or character of the appointment, i.e., whether the appointment is temporary or permanent.[294]

The power to appoint includes the power to decide who among various choices is best qualified provided that the person chosen has the qualification provided by law.[295] Even the next-in-rank rule of the Civil Service Code cannot be read as binding the appointing authority to choose the first in the order of rank when two or more possess the requisite qualifications.[296]

> Q: The Revised Administrative Code of 1987 provides, "*All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary.*" Is the absence of recommendation of the Secretary of Justice to the President fatal to the appointment of a prosecutor?
> A: Appointment calls for discretion on the part of the appointing authority. The power to appoint prosecutors is given to the President. The Secretary of Justice is under the control of the President. Hence, the law must be read simply as allowing the Secretary of Justice to advice the President. (Bermudez v. Secretary, 1999)

C. Classification of Appointment (1994 Bar Question)

1. Permanent
2. Temporary
3. Regular
4. Ad Interim

1. Permanent (2003 Bar Question)

Permanent appointments are those extended to persons possessing eligibility and are thus protected by the constitutional guarantee of security of tenure. [297]

2. Temporary (2003 Bar Question)

Temporary appointments are given to persons without such eligibility, revocable at will and without the necessity of just cause or a valid investigation[298]; made on the understanding that the appointing power has not yet decided on a permanent appointee and that the temporary appointee may be replaced at any time a permanent choice is made.

> **Not subject to CA confirmation.** A temporary appointment and a designation are not subject to confirmation by the Commission on Appointments. Such confirmation, if given erroneously, will not make the incumbent a permanent appointee. (Valencia v. Peralta)

3. Regular

A regular appointment is one made by the President while Congress is in session; takes effect only after confirmation by the Commission on Appointments, and once approved, continues until the end of the term of the appointee.

4. Ad Interim (1991, 1994 Bar Question)

An ad interim appointment is one made by the President while Congress is not in session; takes effect immediately, but ceases to be valid if disapproved by the Commission on Appointments or upon the next adjournment of Congress. In the latter case, the ad interim appointment is deemed "by-passed" through inaction.
The ad interim appointment is intended to prevent interruptions in vital government services that would otherwise result form prolonged vacancies in government offices.

> **Ad interim appointment is a permanent appointment.** It is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. (Matibag v. Benipayo, 2002)

Ad interim appointed, how terminated.

1. Disapproval of the appointment by the Commission on Appointments;
2. Adjournment by Congress without the CA acting on the appointment.

[292] Sinco, Philippine Political Law, p 272 (1954ed).
[293] Flores v. Drilon, 223 SCRA 568.
[294] Antonio B. Nachura, Outline/Reviewer in Political Law 274 (2006 ed.)
[295] Bernas Primer at 305 (2006 ed.)
[296] Bernas Commentary, p 840 (2003 ed).
[297] Cruz, Philippine Political Law, p. 190 (1995 ed).
[298] Cruz, Philippine Political Law, p. 190 (1995 ed).

> There is no dispute that when the Commission on Appointments disapproves an ad interim appointment, the appointee can no longer be extended a new appointment, inasmuch as the approval is a final decision of the Commission in the exercise of its checking power on the appointing authority of the President. Such disapproval is final and binding on both the appointee and appointing power.
> But when an ad interim appointment is by-passed because of lack of time or failure of the Commission on Appointments to organize, there is no final decision by the Commission to give or withhold its consent to the appointment. Absent such decision, the President is free to renew the *ad interim* appointment. (Matibag v. Benipayo)

Q: What happens if a special session is called and that session continues until the day before the start of the regular session? Do appointments given prior to the start of the special session lapse upon the end of the special session or may they continue into the regular session?
A: *Guevara v. Inocente* again says that there must be a "constructive recess" between the sessions and thus appointments not acted upon during the special session lapse before the start of the regular session.[299]

Difference between an ad interim appointment and an appointment in an acting capacity.

1. The former refers only to positions which need confirmation by the CA while the latter is also given to those which do not need confirmation.
2. The former may be given only when Congress is not in session whereas the latter may be given even when Congress is in session.

Acting Capacity. The essence of an appointment in an acting capacity is its temporary nature. In case of a vacancy in an office occupied by an alter ego of the President, such as the Office of Department Secretary, the President must necessarily appoint the alter ego of her choice as Acting Secretary before the permanent appointee of her choice could assume office.
Congress, through law, cannot impose on the President the obligation to appoint automatically the undersecretary as her temporary alter ego. "An *alter ego*, whether temporary or permanent, holds a position of great trust and confidence. Congress, in the guise of prescribing qualifications to an office, cannot impose on the President who her *alter ego* should be."Acting appointments are a way of temporarily filling important offices, but if abused, they can also be a way of circumventing the need for confirmation by the Commission on Appointments.
However, we find no abuse in the present case. The absence of abuse is apparent from President Arroyo's issuance of ad interim appointments to respondents immediately upon the recess of Congress, way before the lapse of one year. (Pimentel v. Ermita, 2005)

D. Kinds of Presidential Appointment

1. Appointments made by an Acting President (Section 14)
2. Appointments made by the President within two months before the next presidential elections and up to the end of his term. (Section 15)
3. Regular Appointments (Section 16)
4. Recess or Ad interim Appointments (Section 13)

E. Scope of the Power to Appoint

Officials to be Appointed by the President

1. Those officials whose appointments are vested in him by the Constitution. *(See Section 16, 1st sentence)*
   - Heads of executive departments
   - Ambassadors, other public ministers and consuls
   - Officers of the armed forces from rank of colonel or naval captain
   - Article VIII, Section 9 provides that the President appoints member of the SC and judges of lower courts
   - The President also appoints members of JBC, chairmen and members of the constitutional commissions (art 9,B, Sec 1(2); C, Section 1(2)), the Ombudsman and his deputies (art 11, sec 9).
   - Appointment of Sectoral Representatives (art 18 sec 7) (Quintos-Deles v. Commission on Appointments)
2. Those whom he may be authorized by law *(Section 16, 2nd sentence)*
3. Any other officers of the government whose appointments are not otherwise provided by law (Constitution or statutes). *(Section 16, 2nd sentence)*

Significance of enumeration in Section 16, 1st sentence. The enumeration means that Congress may not give to any other officer the power to appoint the above enumerated officers.[300]

[299]

[300] Bernas Primer at 306 (2006 ed.)

F. Appointments needing the Confirmation of CA

CA Confirmation
Exclusive List

1. What appointments need confirmation by the Commission on Appointments? (1999 Bar Q)

Those enumerated in the 1st sentence of Section 16:

1. Heads of executive departments
2. Ambassadors, other public ministers and consuls
3. Officers of the armed forces from rank of colonel or naval captain
4. Those other officers whose appointments are vested in him in the Constitution. *(***Sarmiento v. Mison***) (Note: Although the power to appoint Justices, judges, Ombudsman and his deputies is vested in the President, such appointments* ***do not need*** *confirmation by the Commission on Appointments)*

Why from rank of colonel. The provision hopefully will have the effect of strengthening civilian supremacy over the military[301] To some extent, the decision of the Commission was influenced by the observation that coups are generally led by colonels.[302]

Military officers. The clause "officers of the armed forces from the rank of colonel or naval captain" refers to military officers alone. Hence, promotion and appointment of officers of Philippine Coast Guard which is under the DOTC (and not under the AFP), do not need the confirmation of Commission on Appointments. (Soriano v. Lista, 2003) Also, promotion of senior officers of the PNP is not subject to confirmation of CA. PNP are not members of the AFP. (Manalo v. Sistoza, 1999)

Chairman of CHR. The appointment of the Chairman of the Commission on Human Rights is not provided for in the Constitution or in the law. Thus, there is no necessity for such appointment to be passed upon by the Commission on Appointments. (Bautista v. Salonga)

2. Exclusive list

The Congress cannot by law require the confirmation of appointments of government officials other than those enumerated in the first sentence of Section 16 of Article VII. (Calderon v. Carale)

[301] Bernas Commentary, p 844 (2003 ed).
[302] II RECORD 394-395.

G. Steps in the Appointing Process (where COA confirmation is needed)

1. Nomination by the President
2. Confirmation of the Commission on Appointments
3. Issuance of the Commission

Acceptance. An appointment is deemed complete only upon its acceptance. Pending such acceptance, the appointment may still be withdrawn. (Lacson v. Romero)
Appointment to a public office cannot be forced upon any citizen except for purposes of defense of the State under Article II Section 4.

H. Appointment of Officers Lower in Rank

> Section 16 (3rd sentence of first paragraph)
> The Congress may, by law, vest the appointment of other officers lower in rank in the **President alone**, in the courts, or in the heads of departments, agencies, commissions, or boards.

Significance of the phrase "the President alone". Alone means to the exclusion of the courts, the heads of departments, agencies, commissions or boards. [303]

Appointing authority may also be given to other officials. Thus Section 16 says: "The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards." In *Rufino v Endriga*[304] interpreted this to mean that, when the authority is given to collegial bodies, it is to the chairman that the authority is given. But he can appoint only officers "lower in rank," and not officers equal in rank to him. Thus a Chairman may not appoint a fellow member of a Board.

I. Limitations on the President's Appointing Power

> **Section 14**. Appointments extended by an Acting President shall remain effective, unless revoked by the elected President within ninety days from his assumption or reassumption of office.

> **Section 15**. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

Special Limitations

[303] Bernas Commentary, p 847 (2003 ed).; The earlier view of Fr. Bernas confirmed by Sarmiento v. Mison, was that the retention of the phrase "President alone" was an oversight.
[304] G.R. No. 139554, July 21, 2006.

1. ***(Anti-Nepotism Provision)*** The President may not appoint his spouse and relatives by consanguinity or affinity within the fourth civil degree as Members of the Constitutional Commission, as Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of Bureaus or offices, including government owned-or-controlled corporations. **(*Section 13)***
2. Appointments extended by an acting President shall remain effective unless revoked by the elected President within 90 days form his assumption of office. ***(Section 14)***
3. ***(Midnight Appointments)***Two months immediately before the next presidential elections and up to the end of his term, a President or acting President shall not make appointments except for temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. **(*Section 15)***
4. The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the CA or until the next adjournment of Congress. ***(Section 16 par. 2)***

   Rule [Section 15] applies in the appointments in the Judiciary. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. Since the exception applies only to executive positions, the prohibition covers appointments to the judiciary.[305]
   During this period [2 months immediately before the next presidential elections…], the President is neither required to make appointments to the courts nor allowed to do so.
   Section 4(1) and 9 of Article VIII simply mean that the President is required by law to fill up vacancies in the courts within the same time frames provided therein unless prohibited by Section 15 of Article VII.
   While the filing up of vacancies in the judiciary is undoubtedly in the public interest, there is no showing in this case of any compelling reason to justify the making of the appointments during the period of the ban. (In Re Appointment of Mateo Valenzuela, 1998)

   Provision applies only to presidential appointments. The provision applies only to presidential appointments. There is no law that prohibits local executive officials from making appointments during the last days of their tenure. (De Rama v. CA)

Other Limitations:

1. The presidential power of appointment may also be limited by Congress through its power to prescribe qualifications for public office.
2. The judiciary may annul an appointment made by the President if the appointee is not qualified or has not been validly confirmed.[306]

J. Power of Removal

The President possesses the power of removal by implication from other powers expressly vested in him.

1. It is implied from his power to appoint
2. Being executive in nature, it is implied from the constitutional provision vesting the executive power in the President.
3. It may be implied from his function to take care that laws be properly executed; for without it, his orders for law enforcement might not be effectively carried out.
4. The power may be implied fro the President's control over the administrative departments, bureaus, and offices of the government. Without the power to remove, it would not be always possible for the President to exercise his power of control.[307]

As a general rule, the power of removal may be implied from the power of appointment.[308] However, the President cannot remove officials appointed by him where the Constitution prescribes certain methods for separation of such officers from public service, e.g., Chairmen and Commissioners of Constitutional Commissions who can be removed only by impeachment, or judges who are subject to the disciplinary authority of the Supreme Court. In the cases where the power of removal is lodged in the President, the same may be exercised only for cause as may be provided by law, and in

[305] *In re: Appointment of Valenzuela,* AM 98-0501 SC, November 9, 1998.

[306] Cruz, Philippine Political Law, p. 195 (1995 ed).

[307] Sinco, Philippine Political Law, p 275 (1954ed).; *But See* Ang-Angco v. Castillo, "*The power of control is not the source of the Executive's disciplinary power over the person of his subordinates. Rather, his disciplinary power flows from his power to appoint*." Bernas Primer at 313 (2006 ed).

[308] Cruz, Philippine Political Law, p. 196 (1995 ed).

accordance with the prescribed administrative procedure.

Members of the career service. Members of the career service of the Civil Service who are appointed by the President may be directly disciplined by him. (Villaluz v. Zaldivar) provided that the same is for cause and in accordance with the procedure prescribed by law.

Members of the Cabinet. Members of the Cabinet and such officers whose continuity in office depends upon the President may be replaced at any time. (*Legally speaking, their separation is effected not by removal but by expiration of term.*[309]) (See Alajar v. CA)

VI. Power of Control

Control
Control v. Supervision
The President and Power of Control
Alter ego Principle; Doctrine of Qualified Political Agency
Supervision over LGUs
The Take-Care Clause

> **Section 17.** The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

A. Control

Control is the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.[310]

It includes the authority to order the doing of an act by a subordinate or to undo such act or to assume a power directly vested in him by law.[311] The power of control necessarily includes the power of supervision.[312]

B. Control v. Supervision

Control is a stronger power than mere supervision.[313]

Supervision. Supervision means overseeing or the power or authority of an officer to see that subordinate officer performs their duties. If the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties.[314]

Bernas Primer: Power of Supervision is the power of a superior officer to "ensure that the laws are faithfully executed" by inferiors. The power of supervision does not include the power of control; but the power of control necessarily includes the power of supervision.[315]

Control	***Supervision***
An officer in control lays down the rules in the doing of an act.	Supervision does not cover the authority to lay down the rules. Supervisor or superintendent merely sees to it that the rules are followed.
If rules are not followed, he may, in his discretion, order the act undone, re-done by his subordinate or he may decide to do it himself.	If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed. (Drilon v. Lim)

C. The President and Power of Control

Power of Control of the President
Scope
Section 17 is self-executing
Not a Source of Disciplinary Powers

1. Power of Control of the President

[Power of Control] has been given to the President over all executive officers from Cabinet members to the lowliest clerk. This is an element of the presidential system where the President is "*the* Executive of the government."[316]

The power of control vested in the President by the Constitution makes for a strongly centralized administrative system. It reinforces further his position as the executive of the government, enabling him to comply more effectively with his constitutional duty to enforce laws. The power to prepare the budget of the government strengthens the President's position as administrative head.[317]

2. Scope

[309] Cruz, Philippine Political Law, p. 197 (1995 ed).
[310] Mondano v. Silvosa
[311] Cruz, Philippine Political Law, p. 198 (1995 ed).
[312] Bernas Primer at 313 (2006 ed.)
[313] Cruz, Philippine Political Law, p. 198 (1995 ed).
[314] Mondano v. Silvosa
[315] Bernas Primer at 313 (2006 ed.)
[316] Bernas Primer at 310 (2006 ed.)
[317] Sinco, Philippine Political Law, p 243 (1954ed).

a. The President shall have control of all the executive departments, bureaus, and offices. (Section 17)

b. The President has control over officers of GOCCs. (NAMARCO v. Arca) (*Bernas: It is submitted that such power over government-owned corporation comes not from the Constitution but from statute. Hence, it may also be taken away by statute.)*

c. Control over what? The power of control is exercisable by the President **over the acts** of his subordinates and not necessarily over the subordinate himself. (Ang-angco v. Castillo) It can be said that the while the Executive has control over the "judgment" or "discretion" of his subordinates, it is the legislature which has control over their "person."[318]

d. Theoretically, the President has full control of all the members of the Cabinet. He may appoint them as he sees fit, shuffle them at pleasure, and replace them in his discretion without any legal inhibition whatever.[319]

e. The President may exercise powers conferred by law upon Cabinet members or other subordinate executive officers. (City of Iligan v. Director of Lands) Even where the law provides that the decision of the Director of Lands on questions of fact shall be conclusive when affirmed by the Sec of DENR, the same may, on appeal to the President, be reviewed and reversed by the Executive Secretary. (Lacson-Magallanes v. Pano)

f. It has been held, moreover, that the express grant of the power of control to the President justifies an executive action to carry out the reorganization of an executive office under a broad authority of law.[320] A reorganization can involve the reduction of personnel, consolidation of offices, or even abolition of positions by reason of economy or redundancy of functions. While the power to abolish an office is generally lodged with the legislature, the authority of the President to reorganize the executive branch, which may include such abolition, is permissible under present laws.[321]

3. Section 17 is a self-executing provision

The President derives power of control directly from the Constitution and not from any implementing legislation. Such a law is in fact unnecessary and will even be invalid if it limits the exercise of his power or withdraws it altogether from the President.[322]

4. Power of Control is not the source of the Executive's disciplinary power

The power of control is not the source of the Executive's disciplinary power over the person of his subordinates. Rather, his disciplinary power flows from his power to appoint. (Ang-Angco v. Castillo)[323]

D. Alter Ego Principle; Doctrine of Qualified Political Agency

Doctrine
When Doctrine not Applicable
Reason for the Doctrine
Power of Control exercised by Department Heads
Power of Control exercised by ES
Abakada Case

1. Doctrine

The doctrine recognizes the establishment of a single executive. The doctrine postulates that, "All executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, (except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally,) the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and ***the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively, the acts of the Chief Executive"*** *(Villena v. Sec. of Interior)*

Put simply, when a department secretary makes a decision in the course of performing his or her official duties, the decision, whether honorable or disgraceful, is presumptively the decision of the President, unless he quickly and clearly disowns it.[324]

2. When Doctrine not Applicable

Qualified political agency does NOT apply if the President is required to act in person by law or by

[318] Bernas Primer at 313 (2006 ed.)

[319] Cruz, Philippine Political Law, p. 199 (1995 ed).

[320] *Anak Mindanao v. Executive Sec,* G.R. No. 166052 , August 29, 2007; *Tondo Medical Center Employees v. CA*. G.R. No. 167324, July 17, 2007;

[321] Malaria Employees v. Executive Secretary, G.R. No. 160093, July 31, 2007.

[322] Cruz, Philippine Political Law, p. 199 (1995 ed).

[323] Bernas Primer at 313 (2006 ed.)

[324] Fr. Bernas in his Inquirer column, "A Golden Opportunity for GMA". http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=107245

the Constitution. Example: The power to grant pardons must be exercised personally by the President.

3. Reason for the Doctrine

Since the executive is a busy man, he is not expected to exercise the totality of his power of control all the time. He is not expected to exercise all his powers in person. He is expected to delegate some of them to men of his confidence, particularly to members of his Cabinet. Thus, out of this **practical necessity** has risen what has come to be referred to as "doctrine of qualified political agency."[325]

4. Power of Control exercised by Department Heads in the President's Behalf

The President's power of control means his power to reverse the judgment of an inferior officer. It may also be exercised in his behalf by Department Heads. Thus the Secretary of Justice may reverse the judgment of a prosecutor and direct him to withdraw an information already filed. Such action is not directly reviewable by a court. One who disagrees, however, may should appeal to the Office of the President in order to exhaust administrative remedies prior to bring it to court.[326]

5. Power of Control exercised by the ES

The Executive Secretary when acting "by authority of the President" may reverse the decision of another department secretary. (Lacson-Magallanes v. Pano) [327]

6. Abakada Case

Petitioners argue that the EVAT law is unconstitutional, as it constitutes abandonment by Congress of its exclusive authority to fix the rate of taxes and nullififed the President's power of control by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance. The SC ruled that the Secretary of Finance can act as agent of the Legislative Department to determine and declare the event upon which its expressed will is to take effect. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former to the latter.[328] (Abakada Guro v. ES, 2005)

E. Power of Supervision over LGUs

The power of the President over local governments is only one of general supervision.[329] (See Article X, Sections 4 and 16)

The President can only interfere in the affairs and activities of a local government unit if he finds that the latter had acted contrary to law. (Judge Dadole v. COA)

A law (RA 7160 Sec 187) which authorizes the Secretary of Justice to review the constitutionality of legality of a tax ordinance—and if warranted, to revoke it on either or both grounds—is valid, and does not confer the power of control over local government units in the Secretary of Justice, as even if the latter can set aside a tax ordinance, he cannot substitute his own judgment for that of the local government unit. (Drilon v. Lim)

F. Faithful Execution Clause; Take Care Clause

The power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government.[330]

The President shall ensure that the laws be faithfully executed. (Section 17 2nd sentence) The law he is supposed to enforce includes the Constitution, statutes, judicial decisions, administrative rules and regulations and municipal ordinances, as well as treaties entered into by government.[331]

This power of the President is not limited to the enforcement of acts of Congress according to their express terms. The President's power includes "the rights and obligations growing out of the Constitution itself, international relations, and all the protection implied by the nature of the government under the Constitution.[332]

The reverse side of the *power* to execute the law is the *duty* to carry it out. The President cannot refuse to carry out a law for the simple reason that in his judgment it will not be beneficial to the people.[333] As the Supreme Court pointed out, "after all we still live under a rule of law."

It has been suggested that the President is not under obligation to enforce a law which in his belief is unconstitutional because it would create no

[325] Bernas Commentary, p 857 (2003 ed).

[326] *Orosa v. Roa,* GR 14047, July 14, 2006; *DENR v. DENR Employees,* G.R. No. 149724. August 19, 2003

[327] See the case of Neri v. Senate Committee on the authority of ES to invoke Executive Immunity. -asm

[328] San Beda College of Law, 2008 Centralized Bar Operations, Political Law Reviewer, p. 29.

[329] Bernas Primer at 313 (2006 ed.)

[330] Cruz, Philippine Political Law, p. 203 (1995 ed).

[331] Cruz, Philippine Political Law, p. 203 (1995 ed).

[332] In Re Neagle, 135 US 1 (1890). Bernas Commentary, p 863 (2003 ed).

[333] Bernas Commentary, p 863 (2003 ed)

rights and confer no duties being totally null and void. The better view is that it is not for him to determine the validity of a law since this is a question exclusively addressed to the judiciary. Hence, until and unless a law is declared unconstitutional, the President has a duty to execute it regardless of his doubts on its validity. A contrary opinion would allow him not only to negate the will of legislature but also to encroach upon the prerogatives of the judiciary.[334]

VII. Military Power/Emergency Powers

The Military Power
Limitations on Military Power
Commander-in-Chief Clause/ Calling Out Power
Suspension of the Privilege
Martial Law

> **Section 18**. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over where civil courts are able to function, nor automatically suspend the privilege of the writ.
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

A. The Military Power (1987 Bar Question)

Section 18 bolsters the principle announced in Article II, Section 3 that "civilian authority is at all times, supreme over the military." By making the President the commander-in-chief of all the armed forces, the Constitution lessens the danger of a military take-over of the government in violation of its republican nature.[335]

Section 18 grants the President, as Commander-in-Chief, a sequence of graduated powers. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law. (Sanlakas v. Executive Secretary)

The ***power of the sword*** makes the President the most important figure in the country in times of war or other similar emergency.[336] It is because the sword must be wielded with courage and resolution that the President is given vast powers in the making and carrying out of military decisions.[337]

The military power enables the President to:

1. Command all the armed forces of the Philippines;
2. Suspend the privilege of the writ of *habeas corpus*
3. Declare martial law

B. Limitations on Military Power[338] (1987, 2000 Bar Question)

1. He may call out the armed forces to prevent or suppress *lawless violence, invasion* or *rebellion* only.
2. The grounds for the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law are now limited only to *invasion* or *rebellion*.
3. The duration of such suspension or proclamation shall not exceed *sixty days*, following which it shall be automatically lifted.
4. Within *forty-eight hours* after such suspension or proclamation, the President shall personally or in writing report his action to the Congress. If not in session, Congress must convene within 24 hours.
5. The Congress may then, by *majority votes of all its members voting jointly,* revoke his action. The revocation may not set aside by the President.

[334] Cruz, Philippine Political Law, p. 203 (1995 ed).

[335] Cruz, Philippine Political Law, p. 204 (1995 ed).

[336] Cruz, Philippine Political Law, p. 205 (1995 ed).

[337] Cruz, Philippine Political Law, p. 205 (1995 ed).

[338] Cruz, Philippine Political Law, p. 213 (1995 ed).

6. By the same vote and in the same manner, the Congress may, upon initiative of the President, extend his suspension or proclamation for a period to be determined by the Congress if the invasion or rebellion shall continue and the public safety requires extension.
7. The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question and may be raised in an appropriate proceeding by *any* citizen. Moreover, the Supreme Court must decide the challenge within *thirty days* from the time it is filed.
8. Martial law does not automatically suspend the privilege of the writ of habeas corpus or the operation of the Constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdiction over civilians where the civil courts are functioning.
9. The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of *rebellion* or *offenses inherent in or directly connected with invasion.*
10. Any person arrested for such offenses must be judicially charged therewith within *three days.* Otherwise shall be released.

C. Commander-in-Chief Clause; Calling Out Power

Power over the military
Civilian Supremacy
Calling-out Power

> The President shall be the Commander-in-Chief of all armed forces of the Philippines and **whenever it becomes necessary**, he may ***call out*** such armed forces to prevent or suppress lawless violence, invasion or rebellion. (Section 18, 1st sentence)

1. Power over the Military.

The President has absolute authority over all members of the armed forces. (Gudani v. Senga, 2006) He has control and direction over them. As Commander-in-chief, he is authorized to direct the movements of the naval and the military forces placed by law at his command, and to employ them in manner he may deem most effectual to harass and conquer and subdue the enemy.[339]

Since the President is commander-in-chief of the Armed Forces she can demand obedience from military officers. Military officers who disobey or ignore her command can be subjected to court martial proceeding. Thus, for instance, the President as Commander in Chief may prevent a member of the armed forces from testifying before a legislative inquiry. A military officer who disobeys the President's directive may be made to answer before a court martial. Since, however, Congress has the power to conduct legislative hearings, Congress may make use of remedies under the law to compel attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.[340]

2. Civilian Supremacy (Bernasian view)

Is the President a member of the armed forces?

Dichotomy of views:

Sinco: The President is not only a civil official. As commander-in-chief of all armed forces, the President is also a military officer. This dual role given by the Constitution to the President is intended to insure that the civilian controls the military.[341]

Bernas: The weight of authority favors the position that the President is not a member of the armed forces but remains a civilian.

The President's duties as Commander-in-Chief represent only a part of the organic duties imposed upon him. All his other functions are clearly civil in nature.

- He is elected as the highest civilian officer
- His compensation is received for his services rendered as President of the nation, not for the individual part of his duties; no portion of its is paid from sums appropriated for the military or naval forces.
- He is not subject to court martial or other military discipline
- The Constitution does not require that the President must be possessed of military training and talents.

This position in fact, is the only one compatible with Article II, Section 3, which says" "Civilian authority is at all times, supreme over the military." The net effect thus of Article II, Section3 when read with Article VII, Section 18 is that *a civilian President holds supreme military authority and is the ceremonial, legal, and administrative head of the armed forces.*[342]

3. Calling Out Power under Section 18 (2006 Bar Question)

Most Benign power of Section 18
Use of Calling Out Power Vests No Constitutional or Statutory Powers
Declaration of State of Rebellion
Declaration of State of National Emergency

[339] Bernas Commentary, p 866 (2003 ed) citing Fleming v. Page.

[340] *Gudani v. Senga,* G.R. No. 170165, April 15. 2006.

[341] Sinco, Philippine Political Law, p 261 (1954ed).

[342] Bernas Commentary, p 865 (2003 ed).

Calling out Power and Judicial Review

a. Most Benign power of Section 18. The diminution of any constitutional rights through the suspension of the privilege of the writ or the declaration of martial law is deemed as "strong medicine" to be used sparingly and only as a last resort, and for as long as only truly necessary. Thus, the invocation of the "calling out" power stands as a balanced means of enabling a heightened alertness in dealing with the armed threat, but without having to suspend any constitutional or statutory rights or cause the creation of any new obligations.

b. Vests no new constitutional or statutory powers. For the utilization of the "calling out" power alone cannot vest unto the President any new constitutional or statutory powers, such as the enactment of new laws. At most, it can only renew emphasis on the duty of the President to execute already existing laws without extending a corresponding mandate to proceed extra-constitutionally or extra-legally. Indeed, the "calling out" power does not authorize the President or the members of the Armed Forces to break the law.

c. Declaration of State of Rebellion. Declaration of the state of rebellion is within the calling-out power of the President. When the President declares a state of emergency or a state of rebellion her action is merely a description of the situation as she sees it but it does not give her new powers. The declaration cannot diminish or violate constitutionally protected rights. (Sanlakas v. Executive Secretary, G.R. No. 159085, February 3, 2004.)

d. Declaration of a "state of national emergency". The President can validly declare a state of national emergency even in the absence of congressional enactment. (David v. Ermita) (2006 Bar Question)

PP 1017 case
Facts: On February 24, 2006, President Arroyo issued Presidential Proclamation 1017 declaring a state of national emergency. The Solicitor General enumerated the following events that lead to the issuance of PP1017:

1. Escape of Magdalo group and their audacious threat of the Magdalo D-day
2. The defecations in the Military, particularly in the Phil. Marines
3. Reproving statements of the communist leaders
4. Minutes of the Intelligence Report and Security Group of the Philippine Army showing the growing alliance between the NPA and the military.

Did PGMA gravely abuse her discretion in *calling out* the AFP?

NO. Section 18 grants the President the *calling out power.* The only criterion for the exercise is that "whenever it becomes necessary", the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion" These conditions are present in this case. Considering the circumstances then prevailing PGMA found it necessary to issue PP1017. Owing to her Office's vast intelligence network, she is in the best position to determine the actual condition in her country. ***PP1017 is constitutional insofar as it constitutes a call by PGMA on the AFP to prevent or suppress lawless violence.***

e. President's action in calling out the armed forces, and judicial review. It may be gathered from the broad grant of power that the actual use to which the President puts the armed forces, is unlike the suspension of the privilege of writ of habeas corpus, not subject to judicial review.[343]

But, wait! While the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom and that it cannot be called upon to overrule the President's wisdom or substitute its own, it stressed that "this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. (IBP v. Zamora) Judicial inquiry can *go no further* than to satisfy the Court *not* that the President's decision is *correct,* but that "the President did not act *arbitrarily*." Thus, the standard is not correctness, but arbitrariness. It is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings. (***IBP v. Zamora cited in David v. Arroyo***)

D. Suspension of the Privilege

Writ of Habeas Corpus
Privilege of the Writ of Habeas Corpus
Suspension of the Privilege, Meaning
General Limitations on the power to Suspend
To whom Applicable
Effect on Applicable Persons
Grounds
Duration
Four Ways to Lift the Suspension
Duty of the President
Role of Congress
Role of the Supreme Court

1. Writ of HC

The writ. The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the

[343] Bernas Commentary, p 866 (2003 ed)

prisoner at a designated time and place, with the day and cause of his caption and detention, to do, to submit to, and receive whatever the court or judge awarding the writ shall consider in his behalf. (Bouvier's Law Dictionary) (Hence, an essential requisite for the availability of the writ is actual deprivation of personal liberty) *(Simply put, a writ of habeas corpus is a **writ of liberty**)*

Purpose. The great object of which is the liberation of those who may be in prison without sufficient cause.[344]

To what Habeas Corpus extends. Except as otherwise provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. (Rule 102, Section 1 or Rules of COurtt)

2. Privilege of the writ of HC

Privilege. It is the right to have an immediate determination of the legality of the deprivation of physical liberty.

3. Suspension of the privilege.

In case of invasion or rebellion, when the public safety requires it, [**the President**] may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus.

Suspension of the Privilege, Meaning. Suspension of the privilege does not suspend the writ itself, but only it's *privilege*. This means that when the court receives an application for the writ, and it finds the petition in proper form, it will issue the writ as a matter of course, i.e., the court will issue an order commanding the production before the court of the person allegedly detained, at a time and place stated in the order, and requiring the true cause of his detention to be shown to the court. If the return to the writ shows that the person in custody was apprehended and detained in areas where the privilege of the writ has been suspended or for crimes mentioned in the executive proclamation, the court will suspend further proceedings in the action.[345] (1997 Bar Question)

> **Facts:** Claiming they were illegally arrested without any warrant of arrest, petitioners sued several officers of the AFP for damages. The officers of the AFP argued that the action was barred since the suspension of the privilege of the writ of habeas corpus precluded judicial inquiry into the legality of their detention.
>
> **Held:** The contention of AFP officers has not merit. The suspension of the privilege of the writ of *habeas corpus* does not render valid an otherwise illegal arrest or detention. **What is suspended is merely the right of individual to seek release from detention through the writ of *habeas corpus*.**[346] (Aberca v. Ver, 160 SCRA 590)

4. General Limitations on the power to suspend the privilege

1. Time limit of 60 days
2. Review and possible revocation by Congress
3. Review and possible nullification by SC[347]

5. To whom Applicable

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

6. Effect on Applicable Persons

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Article VI Section 18)

The suspension of the privilege of the writ does not impair the right to bail. (Article III Section 13)

7. (Grounds) Factual Bases for Suspending the Privilege (1997 Bar Question)

1. In case of invasion or rebellion
2. When the public safety requires it

8. Duration.

Not to exceed sixty days, following which it shall be lifted, unless extended by Congress.

9. Four Ways to Lift the Suspension

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the Supreme Court
4. By operation of law after 60 days

10. Duty of the President

Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall **submit a report in person or in writing to the Congress**.

11. Role of Congress

a. Congress convenes
b. Congress may either ***revoke*** or (with President's initiative) ***extend***

[344] Moran, Rules of Court, Vol. II, 499.

[345] Cruz, Philippine Political Law, p. 210 (1995 ed).

[346] Jacinto Jimenez, Political Law Compendium, 322 (2006 ed.)

[347] Bernas Primer at 318 (2006 ed.)

Congress convenes. The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

Congress may revoke. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

Congress may extend. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

12. Role of Supreme Court

The Supreme Court may **review,** in an appropriate proceeding filed by any citizen, the **sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

E. Martial Law

Martial Law, Definition (Under the 1987 Constitution)
Martial Law, Nature
Proclamation of Martial Law
General Limits on the Power to Proclaim…
Effects of Proclamation of Martial Law
Grounds
Duration
Four Ways to Lift the Suspension
Duty of the President
Role of Congress
Role of the Supreme Court (Open Court Doctrine)

1. Martial Law, Definition.

Martial law in its strict sense refers to that law which has application when civil authority calls upon the military arm to aid it in its civil function. Military arm does not supersede civil authority.

Martial law in the Philippines is imposed by the Executive as specifically authorized and within the limits set by the Constitution.[348]

2. Martial Law, Nature

a. Essentially police power
b. Scope of Martial Law: Flexible Concept

Martial law is **essentially police power**. This is borne out of the constitutional text which sets down "public safety" as the object of the exercise of martial law. Public safety is the concern of police power.

What is peculiar, however, about martial law as police power is that, whereas police power is normally a function of the legislature executed by the civilian executive arm, under martial law, police power is exercised by the executive with the aid of the military.

Martial law is a flexible concept. Martial law depends on two factual bases: (1) the existence of invasion or rebellion; and (2) the requirements of public safety.
Necessity creates the conditions for martial law and at the same time ***limits the scope of martial law***. Certainly, the necessities created by a state of invasion would be different from those created by rebellion. Necessarily, therefore the degree and kind of vigorous executive action needed to meet the varying kinds and degrees of emergency could not be identical under all conditions. *(The common denominator of all exercise by an executive officer of the discretion and judgment normally exercised by a legislative or judicial body.)*

3. Proclamation of Martial Law

In case of invasion or rebellion, when the public safety requires it, [**the President**] may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

> **Q:** Is PP 1017 actually a declaration of Martial law?
> **A:** No. It is merely an exercise of PGMA's calling-out power for the armed forces to assist her in preventing or suppressing lawless violence. It cannot be used to justify act that only under a valid of declaration of Martial Law can be done. (David v. [Ermita])

4. General Limitations on the power to proclaim

1. Time limit of 60 days
2. Review and possible revocation by Congress
3. Review and possible nullification by SC[349]

5. Effects of Proclamation of Martial Law

A State of martial law does not:
1. Suspend the operation of the Constitution
2. Supplant the functioning of the civil courts or legislative assemblies
3. Authorize the conferment of jurisdiction on military courts and agencies over where civil courts are able to function

[348] Bernas Commentary, p 870 (2003 ed).

[349] Bernas Primer at 318 (2006 ed.)

4. Automatically suspend the privilege of the writ. (Section 18)

> **Open Court Doctrine.** Civilians cannot be tried by military courts if the civil courts are open and functioning. (Olaguer v. Military Commission)

The President can: *(This is based on UP and Beda 2008 Bar Reviewers; But see excerpt from Bernas Commentary)*
1. Legislate
2. Order the arrest of people who obstruct the war effort.

Bernas Commentary: The statement that martial law does not "supplant the functioning of …legislative assemblies" means that ordinary legislation continues to belong to the legislative bodies even during martial law. ***Does this mean that the martial law administrator is without power to legislate?***
A: In actual theater of war, the martial law administrator's word is law, within the limits of the Bill of Rights. But outside the theater of war, the operative law is ordinary law.

6. Grounds; Factual Bases for the Proclamation

1. In case of invasion or rebellion
2. When the public safety requires it

7. Duration

Not to exceed sixty days, following which it shall be lifted, unless extended by Congress.

8. Four Ways to Lift the Proclamation

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the Supreme Court
4. By operation of law after 60 days

9. Duty of the President

Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall **submit a report in person or in writing to the Congress**.

10. Role of Congress

a. Congress convenes
b. Congress may either ***revoke*** or (with President's initiative) ***extend***

Congress convenes. The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

Congress may revoke. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

Congress may extend. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

11. Role of Supreme Court (2006 Bar Question)

The Supreme Court may **review,** in an appropriate proceeding filed by any citizen, the **sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

VIII. Power of Executive Clemency

Power of Executive Clemency
Purpose for the Grant of Power
Forms of Executive Clemency
Constitutional Limits on Executive Clemency
Pardon
Amnesty
Administrative Penalties
Other forms of Executive Clemency

> **Section 19**. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.
> He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

A. Power of Executive Clemency

Non-delegable. The power of executive clemency is a non-delegable power and must be exercised by the President personally.[350]

Clemency is not a function of the judiciary; it is an executive function.[351] The exercise of the pardoning power is discretionary in the President and may not be controlled by the legislature or reversed by the courts, save only when it contravenes its limitations.[352]

B. Purpose for the Grant of Power of Executive Clemency

Ratio: Human fallibility

[350] Bernas Commentary, p 893 (2003 ed).
[351] Bernas Commentary, p 892 (2003 ed).
[352] Cruz, Philippine Political Law, p. 215 (1995 ed).

Purpose. That Section 19 gives to the President the power of executive clemency is a tacit admission that human institutions are imperfect and that there are infirmities in the administration of justice. The power therefore exists as an instrument for **correcting** these **infirmities** and for **mitigating** whatever **harshness** might be generated by a too strict application of the law.[353] In recent years, it has also been used as a bargaining chip in efforts to unify various political forces.

C. Forms of Executive Clemency (1988 Bar Question)

1. **Reprieves**- a postponement of a sentence to a date certain, or a stay in the execution.
2. **Commutations**- reduction or mitigation of the penalty.
3. **Pardons**- act of grace which exempts the individual on whom it is bestowed form the punishment which the law inflicts for the crime he has committed.
4. **Remission of fines**
5. **Forfeitures**
6. **Amnesty**- commonly denotes the 'general pardon to rebels for their treason and other high political offenses'.

D. Limits on Executive Clemency

Constitutional Limits on Executive Clemency:

1. It cannot be exercised in **cases of impeachment**
2. Reprieves, commutations, and pardons, and remission of fines and forfeitures can be given only "after **conviction by final judgment**;
3. A grant of amnesty must be with the concurrence of a "majority of all the Members of Congress"
4. No pardon, amnesty, parole, or suspension of sentence for **violation of election laws**, rules, and regulations shall be granted by the President without the favorable recommendation of COMELEC.[354]

Other Limitations:

1. A pardon cannot be extended to a person convicted of legislative contempt or civil contempt.
2. Pardon cannot also be extended for the purpose of absolving the pardonee of civil liability, including judicial costs.
3. Pardon will not restore offices forfeited.[355]

E. Pardon

Definition of Pardon
Classification of Pardon
Scope of Pardon
Limitations on Exercise
When Completed
Effect of Pardon
Pardon v. Parole

1. Pardon

a. What is Pardon?
b. Pardon as an act of grace
c. What does pardon imply?

a. Act of grace which exempts the individual on whom it is bestowed form the punishment which the law inflicts for the crime he has committed.

b. Because pardon is an act of grace, no legal power can compel the executive to give it. It is an act of pure generosity of the executive and it is his to give or to withdraw before it is completed.[356] Congress has no authority to limit the effects of the President's pardon, or to exclude from its scope any class of offenders. Courts may not inquire in to the wisdom or reasonableness of any pardon granted by the President.[357]

c. Pardon implies guilt. A pardon looks to the future.

2. Classification of Pardon

1. **Plenary**- Extinguishes all the penalties imposed upon the offender, including accessory disabilities.
2. **Partial**-Does not extinguish all the penalties.
3. **Absolute**- One extended without any strings attached.
4. **Conditional**- One under which the convict is required to comply with certain requirements.
   a. **Pardonee may reject conditional pardon.** Where the pardon is conditional, the offender has the right to reject the same since he may feel that the condition imposed is more onerous than the penalty sought to be remitted[358]
   b. **Condition, lawful.** It is necessary that the condition should not be contrary to any provision of law.[359]
   c. **Condition, co-extensive.** The condition of the pardon shall be co-extensive with the penalty remitted. Hence, if the condition is violated after the expiration of the remitted penalty, there can no longer be violation of the conditional pardon.

[353] Bernas Primer at 320 (2006 ed.) Cruz, Philippine Political Law, p. 215 (1995 ed).
Bernas Primer at 320 (2006 ed.)
[354] Bernas Commentary, p 893 (2003 ed).
[355] Cruz, Philippine Political Law, p. 216 (1995 ed).
[356] Bernas Commentary, p 894 (2003 ed).
[357] Sinco, Philippine Political Law, p 281 (1954ed).
[358] Cruz, Philippine Political Law, p. 217 (1995 ed).
[359] Sinco, Philippine Political Law, p 281 (1954ed).

d. *When the condition is that the recipient of the pardon should not violate any of the penal laws, who determines whether penal laws have been violated*? *Must the recipient of pardon undergo trial and be convicted for the new offenses?* The rule that is followed is that the acceptance of the conditions of the pardon imports the acceptance of the condition that the President will also determine whether the condition has been violated. (Torres v. Gonzales, 152 SCRA 272 (1987)) (1997, 2005 Bar Question)

3. Scope of Pardon[360]

In granting the President the power of executive clemency, the Constitution does not distinguish between criminal and administrative cases. (Llamas v. Orbos)

Pardon is only granted after conviction of final judgment.
A convict who has already served his prison term may still be extended a pardon for the purpose of relieving him of whatever accessory liabilities have attached to his offense.[361]

4. Limitations on Exercise of Pardon

Constitutional Limitations

1. It cannot be exercised in **cases of impeachment**
2. Reprieves, commutations, and pardons, and remission of fines and forfeitures can be given only "after **conviction by final judgment**;
3. No pardon, amnesty, parole, or suspension of sentence for **violation of election laws**, rules, and regulations shall be granted by the President without the favorable recommendation of COMELEC.[362]

Other Limitations:

1. A pardon cannot be extended to a person convicted of legislative contempt or civil contempt.
2. Pardon cannot also be extended for the purpose of absolving the pardonee of civil liability, including judicial costs.
3. Pardon will not restore offices forfeited[363] or property or interests vested in others in consequence of the conviction and judgment.[364]

5. When Act of Pardon Completed

Conditional: A pardon must be delivered to and accepted by the offender before it takes effect.

> Reason: The reason for requiring acceptance of a pardon is the need for protecting the welfare of its recipient. The condition may be less acceptable to him than the original punishment, and may in fact be more onerous.[365]

Absolute: *Bernas* submits that acceptance by the condemned is required only when the offer of clemency is not without encumbrance.[366] (1995 Bar Question)

Note: A pardon obtained by fraud upon the pardoning power, whether by misrepresentation or by suppression of the truth or by any other imposition, is absolutely void.[367]

6. Effects of Pardon

a. Relieves criminal liability[368]
b. Does not absolve civil liabilities
c. Does not restore public offices already forfeited, although eligibility for the same may be restored.

a. As to punitive consequences and fines in favor of government. Pardon relieves a party from all punitive consequences of his criminal act. Pardon will have the effect of remitting fines and forfeitures which otherwise will inure to the interests of the government itself.

b. As to civil liabilities pertaining to private litigants. Pardon will not relieve the pardonee of the civil liability and such other claims, as may pertain to private litigants.

c. As Regards Reinstatement:

i. One who is given pardon has no demandable right to reinstatement. He may however be reappointed. (Monsanto v. Factoran, 1989) (*Once reinstated, he may be given his former rank. See Sabello v. Dept. of Education, 1989, Bernas Primer at 322*)

ii. However, if a pardon is given because he was acquitted on the ground that he did not commit the crime, then reinstatement and backwages would be due. (Garcia v. COA, 1993)

[360] Jacinto Jimenez, Political Law Compendium 323 (2006 ed.)
[361] Cruz, Philippine Political Law, p. 218 (1995 ed).
[362] Bernas Commentary, p 893 (2003 ed).
[363] Cruz, Philippine Political Law, p. 216 (1995 ed).
[364] Sinco, Philippine Political Law, p 283 (1954ed).
[365] Bernas Commentary, p 894 (2003 ed).
[366] Bernas Commentary, p 895 (2003 ed).
[367] Sinco, Philippine Political Law, p 283 (1954ed).
[368] Sinco, Philippine Political Law, p 286 (1954ed).

In order that a pardon may be utilized as a defense in subsequent judicial proceedings, it is necessary that it must be pleaded.[369]

7. Pardon v. Parole

Parole involves only a release of the convict from imprisonment but not a restoration of his liberty. The parolee is still in the custody of the law although no longer under confinement, unlike the pardonee whose sentence is condoned, subject only to reinstatement in case of violation of the condition that may have been attached to the pardon.[370]

F. Amnesty

Definition
Nature
Time of Application
Effect of Application
Effects of Grant of Amnesty
Requirements
Pardon v. Amnesty
Tax Amnesty

1. Definition of Amnesty

Grant of general pardon to a class of political offenders either after conviction or even before the charges are filed. It is the form of executive clemency which under the Constitution may be granted by the executive only with the concurrence of the legislature.[371]

2. Nature

It is essentially an executive act and not a legislative act.[372] (Though concurrence of Congress is needed)

(According to Sinco citing Brown v. Walker, 161 US 591, Congress is not prohibited from passing acts of general amnesty to be extended to persons before conviction.)[373]

3. Time of Application[374] (1995 Bar Question)

Amnesty may be granted before or after the institution of criminal prosecution and sometimes even after conviction. (People v. Casido, 268 SCRA 360)

4. Effect of Application

By applying for amnesty, the accused must be deemed to have admitted the accusation against him. (People v. Salig, 133 SCRA 59)

5. Effects of the Grant of Amnesty

Criminal liability is totally extinguished by amnesty; the penalty and all its effects are thus extinguished. (See Article 89 of RPC)

It has also been held that when a detained convict claims to be covered by a general amnesty, his proper remedy is not *habeas corpus* petition. Instead, he should submit his case to the proper amnesty board.[375]

6. Requisites (1993 Bar Question)

1. Concurrence of a majority of all the members of Congress (Section 19)
2. There must be a previous admission of guilt. (Vera v. People)

7. Pardon v. Amnesty

Pardon	Amnesty
Addressed to ODINARY offenses	Addressed to POLITICAL offenses
Granted to INDIVIDUALS	Granted to a CLASS of persons
Conditional pardon must be accepted	Need not be Accepted
No need for congressional concurrence	Requires congressional concurrence
Private act of the President	A public act, subject to judicial notice
Pardon looks forward. Only penalties are extinguished. Civil indemnity is not extinguished.	Amnesty looks backward Extinguishes the offense itself[376]
Only granted after conviction of final judgment	Maybe granted before or after conviction

7. Tax Amnesty

a. Legal Nature
b. Needs Concurrence of Congress

a. Legal Nature. Tax amnesty is a general pardon or intentional overlooking of its authority to impose penalties on persons otherwise guilty of evasion or violation of revenue or tax law, [and as such] partakes of an absolute forgiveness or waiver by the Government of its right to collect what

[369] Sinco, Philippine Political Law, p 283 (1954ed).
[370] Cruz, Philippine Political Law, p. 220 (1995 ed).
[371] Bernas Commentary, p 897 (2003 ed).
[372] Bernas Commentary, p 898 (2003 ed).
[373] Sinco, Philippine Political Law, p 285 (1954ed).
[374] Jacinto Jimenez, Political Law Compendium 325 (2006 ed.)
[375] Bernas Commentary, p 901 (2003 ed).
[376] *See* Bernas Commentary, p 899 (2003 ed).

otherwise would be due it. (Republic v. IAC, 1991)[377]

b. Needs Concurrence of Congress. *Bernas* submits that the President cannot grant tax amnesty without the concurrence of Congress.[378]

G. Other Forms of Executive Clemency

Grant of reprieves, commutations and remission of fines and forfeitures are explicit in the Constitution.

1. Reprieve

A reprieve is a postponement of a sentence to a date certain, or a stay in the execution.

2. Commutation

Commutation is a remission of a part of the punishment; a substitution of a less penalty for the one originally imposed. Commutation does not have to be in any form. Thus, the fact that a convict was released after six years and placed under house arrest, which is not a penalty, already leads to the conclusion that the penalty have been shortened. (Drilon v. CA)

Commutation is a pardon in form but not in substance, because it does not affect his guilt; it merely reduces the penalty for reasons of public interest rather than for the sole benefit of the offender. In short, while a pardon reaches "both punishment prescribed for the offense and guilt of the offender," a commutation merely reduces the punishment.[379]

3. Remission

Remission of fines and forfeitures merely prevents the collection of fines or the confiscation of forfeited property; it cannot have the effect of returning property which has been vested in third parties or money already in the public treasury.[380]

The power of the Chief Executive to remit fines and forfeitures may not be limited by any act of Congress.[381] But a statute may validly authorize other officers, such as department heads or bureau chiefs, to remit administrative fines and forfeitures.[382]

IX. Borrowing Power

Power to contract or guarantee foreign loans
Duty of the Monetary Board

> **Section 20**. The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decision on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

A. Power to contract or guarantee foreign loans

Requirements
Reason for Concurrence
Why the Monetary Board
Spouses Constantino v. Cuisia

1. Requirements (1994 Bar Question)

The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines:

1. With the prior concurrence of the Monetary Board, and
2. Subject to such limitations as may be provided by law

2. Reason for Concurrence

A President may be tempted to contract or guarantee loans to subsidize his program of government and leave it to succeeding administration to pay. Also, it will enable foreign lending institutions to impose conditions on loans that might impair our economic and even political independence.[383]

3. Why the Monetary Board.

Because the Monetary Board has expertise and consistency to perform the mandate since such expertise or consistency may be absent among the Members of Congress.[384]

4. Spouses Constantino v. Cuisia (2005)

Q: The **financing program** for foreign loans instituted by the President extinguished portions of the country's pre-existing loans through either debt buyback or bond-conversion. The buy-back approach essentially pre-terminated portions of public debts while the bond conversion scheme extinguished public debts through the obtention of a new loan by virtue of a sovereign bond issuance, the proceeds of which in turn were used for terminating the original loan. Petitioners contend

[377] Bernas Primer at 323 (2006 ed.)
[378] Bernas Primer at 323 (2006 ed.)
[379] Sinco, Philippine Political Law, p 284 (1954ed).
[380] Bernas Commentary, p 901 (2003 ed).
[381] Sinco, Philippine Political Law, p 285 (1954ed).
[382] Sinco, Philippine Political Law, p 284 (1954ed).
[383] Cruz, Philippine Political Law, p. 223 (1995 ed).
[384] Bernas Primer at 325 (2006 ed.)

that buyback or bond conversion are not authorized by Article VII, Section 20.

A: The language of the Constitution is simple and clear as it is broad. It allows the President to contract and guarantee foreign loans. It makes no prohibition on the issuance of certain kinds of loans or distinctions as to which kinds of debt instruments are more onerous than others. This Court may not ascribe to the Constitution the meanings and restrictions that would unduly burden the powers of the President. **The plain, clear and unambiguous language of the Constitution should be construed in a sense that will allow the full exercise of the power provided therein.** It would be the worst kind of judicial legislation if the courts were to construe and change the meaning of the organic act.[385]

B. Duty of the Monetary Board

Duty of MB
Reason for Reporting

1. Duty

The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, **submit to the Congress a complete report** of its decision on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

2. Reason for Reporting

In order to allow Congress to act on whatever legislation may be needed to protect public interest.[386]

X. Foreign Affairs Power/Diplomatic Power

The President and Foreign Affairs Power
Foreign Relations Powers of the President
Source of Power
Concurrence by the Senate
Treaties v. Executive Agreements
Power to Deport
Judicial Review

A. The President and Foreign Affairs Powers

As head of State, the President is supposed to the spokesman of the nation on external affairs.[387] The conduct of external affairs is executive altogether.[388] He is the sole organ authorized "to speak or listen" for the nation in the broad field of external affairs.[389]

B. Foreign Relations Powers of the President

1. The power to negotiate treaties and international agreements;
2. The power to appoint ambassadors and other public ministers, and consuls;
3. The power to receive ambassadors and other public ministers accredited to the Philippines;
4. The power to contract and guarantee foreign loans on behalf of the Republic;
5. The power to deport aliens.[390]
6. The power to decide that a diplomatic officer who has become *persona non grata* be recalled.[391]
7. The power to recognize governments and withdraw recognition[392]

C. Source of Power

The extensive authority of the President in foreign relations in a government patterned after that of the US proceeds from two general sources:

1. The Constitution
2. The status of sovereignty and independence of a state.

In other words, the President derives his powers over the foreign affairs of the country not only from specific provisions of the Constitution but also from customs and positive rules followed by independent states in accordance with international law and practice.[393]

D. Concurrence of Senate

When Concurrence of Senate Needed
When Concurrence of Senate Not Needed
Scope of Power to Concur
Treaty

> **Section 21**. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

1. When Concurrence of Senate Needed

Concurrence of at leas 2/3 of all the members of Senate is need for the validity and effectivity of:

[385] Spouses *Constantino v. Cuisia,* G.R. 106064, October 13, 2005; *See* Bernas Primer at 326 (2006 ed.)
[386] Bernas Primer at 325 (2006 ed.)
[387] Cruz, Philippine Political Law, p. 323 (1995 ed).
[388] Cruz, Philippine Political Law, p. 323 (1995 ed).
[389] Sinco, Philippine Political Law, p 298 (1954ed).
[390] Bernas Primer at 326 (2006 ed.)
[391] Bernas Commentary, p 910 (2003 ed).
[392] Bernas Commentary, p 910 (2003 ed); Sinco, Philippine Political Law, p 306 (1954ed).
[393] Sinco, Philippine Political Law, p 243 (1954ed).

1. Treaties of whatever kind, whether bilateral or multilateral.[394]
2. International Agreements (that which are permanent and original)

2. When Concurrence of Senate Not Needed (2003 Bar Question)

Less formal types of international agreements; Agreements which are temporary or are mere implementations of treaties or statutes do not need concurrence.[395]

3. Scope of Power to Concur

The power to ratify is vested in the President subject to the concurrence of Senate. The role of the Senate, however, is limited only to giving or withholding its consent or concurrence, to the ratification. Hence, it is within the authority of the President to refuse to submit a treaty to the Senate. Although the refusal of a state to ratify a treaty which has been signed in his behalf is a serious step that should not be taken lightly, such decision is within the competence of the President alone, which cannot be encroached by the Court via a writ of mandamus. (Pimentel v. Executive Secretary, 2005)

The power of the Senate to give its concurrence carries with it the right to introduce amendments to a treaty. [396] *If the President does not agree to any amendments or reservations added to a treaty by the Senate, his only recourse is to drop the treaty entirely. But if he agrees to the changes, he may persuade the other nation to accept and adopt the modifications.*

4. Treaty

Definition
Two General Steps
Effects of Treaties
Termination of Treaties

a. Definition. Treaty is an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever designation. (1969 Vienna Convention on the Law of Treaties)

b. Two General Steps

1. Negotiation- Here the President alone has authority
2. Treaty Approval[397]

c. Effect of Treaties

1. Contract between states as parties
2. It is a law for the people of each state to observe (municipal law)[398]

E. Treaties v. Executive Agreements

1. International agreements which involve political issues or changes of national policy and those involving international arrangements of a permanent character take the form or a treaty; while international agreements involving adjustment of details carrying out well established national policies and traditions and involving arrangements of a more or less temporary nature take the form of executive agreements
2. In treaties, formal documents require ratification, while executive agreements become binding through executive action. (Commissioner of Customs v. Eastern Sea Trading 3 SCRA 351)

F. Power to Deport

The power to deport aliens is lodged in the President. It is subject to the regulations prescribed in Section 69 of the Administrative Code or to such future legislation as may be promulgated. (In re McClloch Dick, 38 Phil. 41)

The adjudication of facts upon which the deportation is predicated also devolves on the Chief Executive whose decisions is final and executory. (Tan Tong v. Deportation Board, 96 Phil 934, 936 (1955))

G. Judicial Review

Treaties and other international agreements concluded by the President are also subject to check by the Supreme Court, which has the power to declare them unconstitutional. (Art. VIII, Section 4)

XI. Budgetary Power

Budgetary Power
The Budget
Government Budgetary Process
Congress May Not Increase Appropriations

> **Section 22**. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

394 Bernas Commentary, p 894 (2003 ed).
Note that a treaty which has become customary law may become part of Philippine law by incorporation through Article 2 Section. -asm

395 Bernas Primer at 326 (2006 ed.)

396. Sinco, Philippine Political Law, p 299 (1954ed).

397 Sinco, Philippine Political Law, p 299 (1954ed).

398 Sinco, Philippine Political Law, p 300 (1954ed).

A. Budgetary Power

This power is properly entrusted to the executive department, as it is the President who, as chief administrator and enforcer of laws, is in best position to determine the needs of the government and propose the corresponding appropriations therefor on the basis of existing or expected sources of revenue.[399]

B. The Budget

The **budget of receipts and expenditures** prepared by the President is the basis for the general appropriation bill passed by the Congress.[400]

The phrase "sources of financing" has reference to sources other than taxation.[401]

C. Government Budgetary Process

The complete government budgetary process has been graphically described as consisting of four major phases:

1. Budget Preparation
2. Legislative Authorization
3. Budget Execution
4. Budget Accountability[402]

D. Congress May Not Increase Appropriations

The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. (Article VI Section 25(1))

XII. Informing Powers

Not Mandatory
State of the Nation Address

> **Section 23**. The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time.

A. Not Mandatory

Although couched in mandatory language, the first sentence of this provision does not as a rule impose a compellable duty on the President.[403]

B. State of the Nation Address

The President usually discharges the informing power through the state-of-the-nation address, which is delivered at the opening of the regular session of the legislature.[404]

399 Cruz, Philippine Political Law, p. 224 (1995 ed).

400 Bernas Primer at 329 (2006 ed.)

401 Bernas Commentary, p 912 (2003 ed).

402 Guingona v. Carague, 196 SCRA 221 (1991); Bernas Commentary, p 912 (2003 ed).

403 Cruz, Philippine Political Law, p. 225 (1995 ed).

404 Cruz, Philippine Political Law, p. 226 (1995 ed).

JUDICIAL DEPARTMENT

I. Judicial Department

Composition
Common Provisions
Independence of Judiciary

A. Composition

The Supreme Court and all lower courts make up the judicial department of our government.[405]

B. Common Provisions

1. Independence of Judiciary (See Section 3)
2. Congressional Oversight (Section 2)
3. Separation of Powers (Section 12)
4. General Rules (Section 14)
5. Period to Decide Case (Section 15)

C. Independence of Judiciary (2000 Bar Question)

To maintain the independence of the judiciary, the following **safeguards** have been embodied in the Constitution:[406]

1. The Supreme Court is a constitutional body. It cannot be abolished nor may its membership or the manner of its meeting be changed by mere legislation. (art 8 §2)
2. The members of the Supreme Court may not be removed except by impeachment. (art. 9 §2)
3. The SC may not be deprived of its minimum original and appellate jurisdiction as prescribed in Article X, Section 5. (art. 8 §2)
4. The appellate jurisdiction of the Supreme Court may not be increased by law without its advice or concurrence. (art. 6 §30)
5. Appointees to the judiciary are now nominated by the Judicial and Bar Council and no longer subject to confirmation by Commission on Appointments. (art. 8 §9)
6. The Supreme Court now has administrative supervision over all lower courts and their personnel. (art. 8 §6)
7. The Supreme Court has exclusive power to discipline judges of lower courts. (art 8 §11)
8. The members of the Supreme Court and all lower courts have security of tenure, which cannot be undermined by a law reorganizing the judiciary. (art. 8 §11)
9. They shall not be designated to any agency performing quasi-judicial or administrative functions. (art. 8 §12)
10. The salaries of judges may not be reduced during their continuance in office. (art. 8 §10)
11. The judiciary shall enjoy fiscal autonomy (art 8§3)
12. Only the Supreme Court may order the temporary detail of judges (art 8 §5(3))
13. The Supreme Court can appoint all officials and employees of the judiciary. (art. 8 §5(6))

> **Section 3**. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

(1999 Bar Question)
Fiscal autonomy means freedom from outside control.As envisioned in the Constitution, fiscal autonomy enjoyed by the Judiciary…contemplates a guarantee of ***full flexibility to allocate and utilize their resources*** with the wisdom and dispatch that their needs, require.

Fiscal autonomy recognizes the power and authority to *(a) levy, assess and collect fees*, (b) fix rates of compensation not exceeding the highest rates authorized by law for compensation, and (c) pay plans of the government and allocate or disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

The imposition of restrictions and constraints on the manner the [Supreme Court] allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative of the express mandate of the Constitution and of the independence and separation of powers. (Bengzon v. Drilon)

Reason. Fiscal autonomy is granted to the Supreme Court to strengthen its autonomy.[407] The provision is intended to remove courts from the mercy and caprice, not to say vindictiveness, of the

[405] Cruz, Philippine Political Law, p. 231 (1995 ed).

[406] Cruz, Philippine Political Law, p. 229 (1995 ed).

[407] Bernas Primer at 336 (2006 ed.)

legislature when it considers the general appropriations bill.[408]

II. Judicial Power

Where Vested
Definition
Scope
Intrinsic Limit on Judicial Power
Grave Abuse of Discretion
Role of Legislature in Judicial Process

> **Section 1**. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

A. Judicial Power Where Vested (1989 Bar Question)

Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. (Section 1 par. 1)

B. Definition of Judicial Power (1994 Bar Question)

Traditional Concept: Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable. (Section 1, 2nd sentence)

Broadened Concept: Duty to determine whether [or not] there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the party of any branch or instrumentality of the Government. (Section 1, 2nd sentence)

C. Scope of Judicial Power (1989 Bar Question)

Judicial power is the measure of the allowable scope of judicial action.[409] The use of the word "includes" in Section 1 connotes that the provision is not intended to be an exhaustive list of what judicial power is.[410]

An accused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts [e.g. death convict who becomes insane after his final conviction cannot be executed while in a state of insanity] The suspension of death sentence is an exercise of judicial power. It is not usurpation of the presidential power of reprieve though the effect is the same- the temporary suspension of the execution of the death convict." (Echegaray v. Sec. of Justice, 1999)

D. Limit on Judicial Power

(1) Courts may not assume to perform non-judicial functions.
(2) It is not the function of the judiciary to give advisory opinion
(3) Judicial power must sometimes yield to separation of powers, political questions and enrolled bill rule.

1. By the principle of separation of powers, courts **may neither attempt to assume nor be compelled to perform non-judicial functions**.[411] Thus, a court may not be required to act as a board of arbitrators (Manila Electric Co. v. Pasay Transportation (1932). Nor may it be charged with administrative functions except when reasonably incidental to the fulfillment of official duties. (Noblejas v. Tehankee) Neither is it's the function of the judiciary to give advisory opinions.

2. Advisory Opinions.

An **advisory opinion** is an opinion issued by a court that does not have the effect of resolving a specific legal case, but merely advises on the constitutionality or interpretation of a law.

The nature of judicial power is also the foundation of the principle that it is not the function of the judiciary to give advisory opinion.[412] If the courts will concern itself with the making of advisory opinions, there will be loss of judicial prestige. There may be less than full respect for court decisions.

Declaratory Judgment v. Advisory Opinions.

Declaratory Judgment	Advisory Opinions
Involves real parties with real conflicting interests	Response to a legal issue posed in the abstract in advance of any actual case in which it may be presented
Judgment is a final one forever binding on the parties.	Binds no one
A judicial act	Not a judicial act[413]

3. The 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to **separation of powers**, to the doctrine on

[408] Cruz, Philippine Political Law, p. 237 (1995 ed).
[409] Bernas Commentary, p 914 (2003 ed).
[410] Bernas Commentary, p 919 (2003 ed).
[411] Bernas Commentary, p 916 (2003 ed).
[412] Bernas Commentary, p 921 (2003 ed).
[413] Bernas Commentary, p 924 (2003 ed).

"**political questions**" or to the "**enrolled bill**" rule.[414]

E. Grave Abuse Clause

"To determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"

Not every abuse of discretion can be the occasion for the Court to come in by virtue of the second sentence of Section 1. It must be "grave abuse of discretion amounting to lack or excess of jurisdiction."[415]

There is grave abuse of discretion:
(1) when an act done contrary to the Constitution, the law, or jurisprudence, or
(2) it is executed whimsically, capriciously, arbitrarily out of malice, ill will or personal bias. (Infotech v. COMELEC, 2004)

Again, the 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to separation of powers, to the doctrine on "political questions" or to the "enrolled bill" rule.[416] (1995 Bar Question)

Rule 65 embodies the Grave Abuse Clause.[417]

F. Role of Legislature in Judicial Process

Although judicial power is vested in the judiciary, the proper exercise of such power requires prior legislative action:
1. Defining such enforceable and demandable rights; and
2. Determining the court with jurisdiction to hear and decide controversies or disputes arising from legal rights.[418]

Courts cannot exercise judicial power when there is no applicable law. The Court has no authority to entertain an action for judicial declaration of citizenship because there was no law authorizing such proceeding. (Channie Tan v. Republic, 107 Phil 632 (1960)) An award of honors to a student by a board of teachers may not be reversed by a court where the awards are governed by no applicable law. (Santiago Jr. v. Bautista) Nor may courts reverse the award of a board of judges in an oratorical contest. (Felipe v. Leuterio, 91 Phil 482 (1952)).[419]

[414] *See* Bernas Commentary, p 919-920 (2003 ed).
[415] Bernas Commentary, p 920 (2003 ed).
[416] *See* Bernas Commentary, p 919-920 (2003 ed).
[417] Annotation to the Writ of Amparo.
[418] Bernas Primer at 335 (2006 ed.)

III. Jurisdiction

Definition
Scope
Role of Congress

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.
No law shall be passed reorganizing the Judiciary when it under-mines the security of tenure of its Members.

A. Definition

Jurisdiction is the power and authority of the court to hear, try and decide a case. (De La Cruz v. CA, 2006)

B. Scope

It is not only the *(1)* **power to determine**, but the *(2)* **power to enforce its determination**.
The *(3)* **power to control the execution** of its decision is an essential aspect of jurisdiction (Echegaray . Sec. of Justice, 301 SCRA 96)

C. Role of Congress

Power. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts. (Section 2)

Limitations:
1. Congress may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5. (art. 8 §2)
2. No law shall be passed reorganizing the Judiciary when it under-mines the security of tenure of its Members. (art. 8 §2)
3. The appellate jurisdiction of the Supreme Court may not be increased by law except upon its advice and concurrence. (art. 6 § 30)

* Jurisdiction in Section 2 refers to jurisdiction over cases [jurisdiction over the subject matter].[420]

IV. The Supreme Court

Composition
Qualifications
Judicial and Bar Council
Appointment
Salaries
Tenure
Removal
Prohibition

[419] Bernas Primer at 335 (2006 ed.)
[420] Cruz, Philippine Political Law, p. 2333 (1995 ed).

A. Composition

> **Section 4**. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

Composition of the Supreme Court: Fifteen (**15**). 1 Chief Justice and 14 Associate Justices.

By so fixing the number of members of the Supreme Court at [fifteen], it seems logical to infer that no statute may validly increase or decrease it.[421]

Collegiate Court. The primary purpose of a collegiate court is precisely to provide for the most exhaustive deliberation before a conclusion is reached.[422]

B. Qualifications

> **Section 7.** (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.
> (2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
> (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

Qualifications of a Member of the Supreme Court:

1. Must be a natural born citizen of the Philippines
2. Must at least be 40 years of age;
3. Must have been for 15 years or more a judge of a lower court or engaged in the practice of law in the Philippines; and
4. A person of proven competence, integrity, probity, and independence.

Congress may not alter the qualifications of Members of the Supreme Court and the constitutional qualifications of other members of the Judiciary. But Congress may alter the statutory qualifications of judges and justices of lower courts.[423]

It behooves every prospective appointee to the Judiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. Thus the fact that a prospective judge failed to disclose that he had been administratively charged and dismissed from the service for grave misconduct by a former President of the Philippines was used against him. It did not matter that he had resigned from office and that the administrative case against him had become moot and academic.[424]
Similary, before one who is offered an appointment to the Supreme Court can accept it, he must correct the entry in his birth certificate that he is an alien.[425]

"A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence."

Competence. In determining the competence of the applicant or recommendee for appointment, the Judicial and Bar Council shall consider his educational preparation, experience, performance and other accomplishments of the applicant. (Rule 3 Section 1 of JBC Rules)
Integrity. The Judicial and Bar Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards. (Rule 4, Section 1 of JBC Rules)
Probity and Independence. Any evidence relevant to the candidate's probity and independence such as, but not limited to, decision he has rendered if he is an incumbent member of the judiciary or reflective of the soundness of his judgment, courage, rectitude, cold neutrality and strength of character shall be considered. (Rule 5 Section of JBC Rules)

C. Judicial and Bar Council (1988, 1999 Bar Question)

Composition
Function
Reason for Creation

> **Section 8**.
> (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
> (2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the

[421] Sinco, Philippine Political Law, p 318 (1954ed).
[422] Cruz, Philippine Political Law, p. 268 (1995 ed).
[423] Bernas Primer at 356 (2006 ed.)
[424] *In re JBC v. Judge Quitain,* JBC No. 013, August 22, 2007.
[425] *Kilosbayan v. Ermita,* G.R. No. 177721, July 3, 2007. This was the case of Justice Gregory Ong of the Sandiganbayanwho was being promoted to the Supreme court. Ong, however, remains in the Sandiganbayan.

Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.
(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Composition of JBC:

1. SC Chief Justice *(ex officio Chairman)*

Ex officio Members

2. Secretary of Justice
3. Representative of Congress

Regular Members (Term of 4 years appointed by President with the consent of CA)

4. Representative of IBP
5. Professor of Law
6. Retired Member of SC
7. Representative of private sector

The Clerk of the Supreme Court shall be the Secretary ex officio of the JBC.

Representative from Congress. Such representative may come from either House. In practice, the two houses now work out a way of sharing representation.[426] A member from each comes from both Houses but each have only half a vote.[427]

Function of JBC. JBC's principal function is to recommend to the President appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Rationale for Creation of JBC. The Council was principally designed to eliminate politics from the appointment and judges and justices. Thus, appointments to the Judiciary do not have to go through a political Commission on Appointments.[428]

D. Appointment

Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

For every vacancy, the Judicial and Bar Council submits to the President a list of at least three names. The President may not appoint anybody who is not in the list. If the President is not satisfied with the list, he may ask for another list.[429]

Why at least 3? The reason for requiring at least three nominees for every vacancy is to give the President enough leeway in the exercise of his discretion when he makes his appointment. If the nominee were limited to only one, the appointment would in effect be made by the Judicial and Bar Council, with the President performing only the mathematical act of formalizing the commission.[430]

Judges may not be appointed in an acting capacity or temporary capacity.[431] It should be noted that what the Constitution authorizes the President to do is to appoint Justices and judges and **not the authority** merely **to designate** a non-member of the Supreme Court **temporarily** to sit as Justice of Supreme Court.[432]

ASM: Do you know that when there is a vacancy in the Supreme Court, the remaining members of the Tribunal vote and make a recommendation to the Judicial and Bar Council.

E. Salaries

Section 10. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

The prohibition of the diminution of the salary of Justices and judges during their continuance in office is intended as a protection for the independence of the judiciary.[433]

The clear intent of the Constitutional Commission was to subject the salary of the judges and justices to income tax. (Nitafan v. CIR, 1987)

F. Tenure

Section 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of **seventy years** or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who

[426] Bernas Primer at 356 (2006 ed.)
[427] Bernas Commentary, p 984 (2003 ed).
[428] Bernas Primer at 357 (2006 ed.)
[429] Bernas Commentary, p 985 (2003 ed).
[430] Cruz, Philippine Political Law, p. 234 (1995 ed).
[431] Cruz, Philippine Political Law, p. 237 (1995 ed).
[432] Bernas Commentary, p 985 (2003 ed).
[433] Bernas Commentary, p 986 (2003 ed).

actually took part in the deliberations on the issues in the case and voted thereon.

Security of Tenure is essential to an independent judiciary.

G. Removal

By Impeachment. The Members of the Supreme Court are removable only by impeachment. They can be said to have failed to satisfy the requirement of "good behavior" only if they are guilty of the offenses which are constitutional grounds of impeachment.

The members of the Supreme Court may be removed from office on impeachment for, and conviction of:

1. Culpable violation of the Constitution;
2. Treason;
3. Bribery;
4. Graft and Corruption;
5. Other High Crimes
6. Betrayal of Public Trust(Article XI, Section 2)

A Supreme Court Justice cannot be charged in a criminal case or a disbarment proceeding, because the ultimate effect of either is to remove him from office, and thus circumvent the provision on removal by impeachment thus violating his security of tenure (In Re: First Indorsement from Hon. Raul Gonzalez, A.M. No. 88-4-5433)

H. Prohibition

Section 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

The provision merely makes explicit an application of the principles of separate of powers.[434]

Take note of the other tasks given to SC or the Members of SC by the Constitution:

1. SC en banc as Presidential Electoral Tribunal (art 7 §4)
2. Chief Justice as presiding officer of the impeachment Court when the President is in trial (art. 11 §3(6)).
3. Chief Justice as ex officio chairman of the JBC. (art. 8 §8(1)).
4. Justices as members of Electoral Tribunals (art. 6 §17).

V. Powers of Supreme Court

General Power
Specific Powers
Original Jurisdiction
Appellate Jurisdiction
Temporary Assignment of Judges
Change of Venue or Place of Trial
Rule-Making Power
Appointment of Court Personnel
Administrative Supervision of Courts
Disciplinary/Dismissal Powers
Contempt Powers
Annual Report

Section 5. The Supreme Court shall have the following powers:
1. Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
2. Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
(c) All cases in which the jurisdiction of any lower court is in issue.
(d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
(e) All cases in which only an error or question of law is involved.
3. Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.
4. Order a change of venue or place of trial to avoid a miscarriage of justice.
5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
6. Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Section 11
xxxThe Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[434] Bernas Commentary, p 991 (2003 ed).

A. General Power

Judicial Power (§1)

B. Specific Powers

Specific Powers of the Supreme Court under Article VIII:

1. Original Jurisdiction
2. Appellate Jurisdiction
3. Temporary Assignment of Judges
4. Change of Venue or Place of Trial
5. Rule-Making Power
6. Appointment of Court Personnel (§5)
7. Administrative Supervision of Courts (§6)
8. Dismissal/ Removal Powers (§11)

(Section 5(1) and (2) refer to the irreducible jurisdiction of the Supreme Court while Section 5 (3 -6) and Section 6 provide of auxiliary administrative powers.)

Other Powers of SC:

1. Jurisdiction over proclamation of Martial law or suspension of the writ of habeas corpus; (art. 7 §18)
2. Jurisdiction over Presidential and Vice-Presidential election contests; (art. 7 §4)
3. Jurisdiction over decision, order, or ruling of the Constitutional Commissions. (art. 9 §7)
4. Supervision over JBC (art. 8 §8(1))
5. Power to Punish Contempt

C. Original Jurisdiction

Section 5(1). The Supreme Court has original jurisdiction over:

1. Cases affecting ambassadors, other public ministers and consuls.
2. Petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.[435]

Note that under international law, diplomats and even consuls to a lesser extent, are not subject to jurisdiction of the courts of the receiving State, save in certain cases, as when immunity is waived either expressly or impliedly. In such instances, the Supreme Court can and probably should take cognizance of the litigation in view of possible international repercussions.[436]

The petitions for *certiorari, mandamus,* prohibition, and *quo warranto* are special civil actions. The questions raised in the first three petitions are questions of jurisdiction or grave abuse of discretion and, in fourth, the title of the respondent. The petition for *habeas corpus* is a special proceeding.[437]

Concurrent Jurisdiction.
The Supreme Court has concurrent original jurisdiction with Regional Trial Courts in cases affecting ambassadors, other public ministers and consuls. (BP 129 § 21(2))
The Supreme Court has concurrent original jurisdiction with the Court of Appeals in petitions for *certiorari,* prohibition and *mandamus* against the Regional Trial Courts. (BP 129 § 9(1))
The Supreme Court has concurrent original jurisdiction with the Court of Appeals and the Regional Trial Courts in petitions for *certiorari,* prohibition and *mandamus* against lower courts and bodies and in petitions for *quo warranto* and *habeas corpus.* (BP 129 §9(1), §21(2))

Principle of Judicial Hierarchy
Under a judicial policy recognizing *hierarchy of courts*, a higher court will not entertain direct resort to it unless the redress cannot be obtained in the appropriate courts. (Santiago v. Vasquez, 217 SCRA 167) Thus, while it is true that the issuance of a writ of prohibition under Rule 65 is within the jurisdiction of the Supreme Court, a petitioner cannot seek relief from the Supreme Court where the issuance of such writ is also within the competence of the Regional Trial Court or the Court of Appeals.
A direct recourse of the Supreme Court's original jurisdiction to issue writs should be allowed only when there are special and important reasons therefore, clearly and specifically set out in the petition. (Mangahas v. Paredes, 2007)

Q: What cases may be filed originally in the Supreme Court?
A: Only petitions for certiorari, prohibition, mandamus, quo warranto, habeas corpus, disciplinary proceedings against members of the judiciary and attorneys, and affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court. (**Rule 56, Section 1, Rules of Court**)

D. Appellate Jurisdiction

Section 5(2). The Supreme Court has the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

[435] *See* Rule 65, 66 and 102, Rules of Court.

[436] Cruz, Philippine Political Law, p. 252 (1995 ed).

[437] Cruz, Philippine Political Law, p. 252 (1995 ed).

b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
c. All cases in which the jurisdiction of any lower court is in issue.
d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
e. All cases in which only an error or question of law is involved.

Irreducible. This appellate jurisdiction of the Supreme Court is irreducible and may not be withdrawn from it by Congress.[438]

Final Judgments of lower courts. It should be noted that the appeals allowed in this section are from final judgments and decrees only of "lower courts" or judicial tribunals. Administrative decisions are not included.[439]

The lower courts have competence to decide constitutional questions. Section 5(2)(a) provides that Supreme Court has ***appellate*** jurisdiction over "*final judgments* and *orders* all cases in which the ***constitutionality*** or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question."

Review of Death Penalty. Section 5 requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death. However, the Constitution has not proscribed an intermediate review. To ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Rule now is that such cases must be reviewed by the Court of Appeals before they are elevated to the Supreme Court.[440]

Note, however, that the rule for the review of decisions of lower courts imposing death or reclusion perpetua or life imprisonment are not the same. In case the sentence is death, there is automatic review by the Court of Appeals and ultimately by the Supreme Court. This is mandatory and neither the accused nor the courts may waive the right of appeal. In the case of the sentence of reclusion perpetua or life imprisonment, however, although the Supreme Court has jurisdiction to review them, the review is not mandatory. Therefore review in this later cases may be waived and appeal may be withdrawn.[441]

In *Republic v. Sandiganbayan, 2002,* it was held that the appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited to questions of law. A **question of law** exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.

Section 5(2), (a) and (b) explicitly grants judicial review in the Supreme Court. *(Judicial Review will be discussed in the next chapter)*

E. Temporary Assignment of Judges

Section 5(3). The Supreme Court has the power to assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

Rationale of the Provision. The present rule bolsters the independence of the judiciary in so far as it vests the power to temporarily assign judges of inferior courts directly in the Supreme Court and no longer in the executive authorities and conditions the validity of any such assignment in excess of six months upon the consent of the transferred judge. This will minimize if not altogether eliminate the pernicious practice of the *rigodon de jeuces,* or the transfer of judges at will to suit the motivations of the chief executive.[442]

Purpose of Transfer. Temporary assignments may be justified to arrange for judges with clogged dockets to be assisted by their less busy colleagues, or to provide for the replacement of the regular judge who may not be expected to be impartial in the decision of particular cases.[443]

Permanent Transfer. Since transfer imports removal from one office and since a judge enjoys security of tenure, it cannot be effected without the consent of the judge concerned.[444]

F. Change of Venue or Place of Trial

Section 5(4). The Supreme Court has the power to order a change of venue or place of trial to avoid a miscarriage of justice.

This power is deemed to be an incidental and inherent power of the Court. (*See* People v. Gutierrez, 36 SCRA 172 (1970))

[438] Cruz, Philippine Political Law, p. 255 (1995 ed).
[439] Cruz, Philippine Political Law, p. 256 (1995 ed).
[440] *People v. Mateo,* G.R. No. 147678-87. July 7, 2004; *People v. Lagua***,** G.R. No. 170565, January 31, 2006.
[441] *People v. Rocha and Ramos*, G.R. No. 173797, August 31, 2007.
[442] Cruz, Philippine Political Law, p. 259 (1995 ed).
[443] Cruz, Philippine Political Law, p. 259 (1995 ed).
[444] Bernas Commentary, p 967(2003 ed).

G. Rule Making Power

Power to Promulgate Rules
Limits on the Rule Making Power
Nature and Function of Rule Making Power
Test to Determin Whether Rules are Substantive
Rules Concerning Protection of Constitutional Rights
Admission to the Practice of Law
Integration of the Bar
Congress and the Rules of Court

1. Power to Promulgate Rules

The Supreme Court has the power to promulgate rules concerning:

1. The protection and enforcement of constitutional rights;
2. Pleading, practice, and procedure in all courts;
3. The admission to the practice of law,
4. The Integrated Bar;
5. Legal assistance to the underprivileged. (Section 5(5))

2. Limits on SC's Rule Making Power

1. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases.
2. They shall be uniform for all courts of the same grade.
3. They shall not diminish, increase, modify **substantive rights**.

Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

3. Nature and Function of Rule Making Power

For a more independent judiciary. The authority to promulgate rules concerning pleading, practice and admission to the practice of law is a traditional power of the Supreme Court. The grant of this authority, coupled with its authority to integrate the Bar, to have administrative supervision over all courts, in effect places in the hands of Supreme Court the totality of the administration of justice and thus makes for a more independent judiciary.

Enhances the capacity to render justice. It also enhances the Court's capacity to render justice, especially since, as the Supreme Court has had occasion to say, it includes the inherent authority to suspend rules when the requirement of justice demand.
Moreover, since it is to the Supreme Court that rule making authority has been given, rules promulgated by special courts and quasi-judicial bodies are effective unless disapproved by the Supreme Court.

4. Test to Determine whether the rules diminish, increase or modify substantive rights

1. If the rule takes away a vested right, it is a substantive matter.
2. If the rule creates a right, it may be a substantive matter.
3. If it operates as a means of implementing an existing right, then the rule deals merely with procedure. (Fabian v. Disierto)

Illustrative cases where the rule merely deals with procedure:

Maniago v. CA, 1996
The rule that unless a reservation to file a separate civil action is reserved, the civil case is deemed filed with the criminal case is not about substantive rights. Whether the two actions must be tried in a single proceeding is a matter of procedure.

Fabian v. Desierto, 1998
The transfer by the Supreme Court of pending cases involving a review of decision of the Office of the Ombudsman in administrative actions to the Court of Appeals is merely procedural. This is because, it is not the right to appeal of an aggrieved party which is affected by law. The *right* has been preserved. Only the *procedure* by which the appeal is to be made or decided has been changed.

People v. Lacson, 400 SCRA 267
(This is quite confusing because of the dates)
Facts: Respondent was charged with multiple murder. He filed a motion with the trial court for judicial determination of probable cause. On March 29, 1999, the trial court dismissed the cases provisionally. On December 1, 2000, the Revised Rules on Criminal Procedure took effect. Section 8 of Rule 117 allowed the revival of the case which was provisionally dismissed only within two years. On June 6, 2001, the criminal cases against respondent were refilled. Respondent argued that the refilling of the cases was barred. The prosecution argued that under Article 90 of the Revised Penal Code, it had twenty years to prosecute respondent.
Held:
Is the rule merely procedural? Yes, the rule is merely procedural. Section 8, Rule 117 is not a statute of limitations. The two-year bar under the rule does not reduce the periods under Article 90 of the Revised Penal Code. It is but a limitation of the right of the State to revive a criminal case against the accused after the case had been filed but subsequently provisionally dismissed with the express consent of the accused. Upon the lapse of the period under the new rule, the State is presumed to have abandoned or waived its right to revive the case. The prescription

periods under the Revised Penal Code are not diminished.
Is the refilling of cases barred in this case? No. A procedural law may not be applied retroactively if to do so would work injustice or would involve intricate problems of due process. The time-bar of two years under the new rule should not be applied retroactively against the State. If the time-bar were to be applied retroactively so as to commence to run on March 31, 1999, when the prosecutor received his copy of the resolution dismissing the cases, instead of giving the State two years to revive the provisionally dismissed cases, the State would have considerably less than two years to do so. The period before December 1, 2000 should be excluded in the computation of the two-year period, because the rule prescribing it was not yet in effect at that time and the State could not be expected to comply with it. [445]

Illustrative cases where the rule deals with substantive matter:

PNB v. Asuncion, 80 SCRA 321
Facts: Petitioner filed a collection case against several solidary debtors. One of them died during the pendency of the case. The court dismissed the case against all the defendants on the ground that the petitioner should file a claim in the estate proceedings. Petitioner argued that the dismissal should be confined to the defendant who died.
Held: Article 1216 of the Civil Code gives the creditor the right to proceed against anyone of the solidary debtors or some or all of them simultaneously. Hence, in case of the death of one of them, the creditor may proceed against the surviving debtors. The Rules of Court cannot be interpreted to mean that the creditor has no choice but to file a claim in the estate of the deceased. Such construction will result in the diminution of the substantive rights granted by the Civil Code.[446]

Santero v. CFI, 153 SCRA 728
Facts: During the pendency of the proceeding for the settlement of the estate of the deceased, respondents, who were children of the deceased, filed a motion asking for an allowance for their support. Petitioners, who were children of the deceased with another woman, opposed on the grounds that petitioners were already of majority age and under Section 3 of Rule 83, the allowance could be granted only to minor children.
Held: Article 188 of the Civil Code grants children the right to support even beyond the age of majority. Hence, the respondent were entitled to the allowance. Since, the right to support granted by the Civil Code is substantive, it cannot be impaired by Section 3, Rule 83 of the Rules of Court.[447]

Damasco v. Laqui, 166 SCRA 214
Facts: Petitioner was charged with grave threats. The trial court convicted him of light threats. Petitioner moved for reconsideration because the crime of which he was convicted had already prescribed when the information was filed.
Held: While an accused who fails to move to quash is deemed to waive all objection which are grounds to quash, this rule cannot apply to prescription. Prescription extinguishes criminal liability. To apply the said rule will contravene Article 89 of the Revised Penal Code which is substantive. The rules promulgated by the Supreme Court must not diminish, increase or modify substantive rights.[448]

Zaldivia v. Reyes, 211 SCRA 277
Facts:
On May 30, 1990, a complaint was filed with the provincial prosecutor against petitioner for violating an ordinance by quarrying without a mayor's permit. The information was filed in court on October 2, 1990. Petitioner moved to quash on the ground that under Act 3326, violations of municipal ordinances prescribe in two months and the prescriptive period is suspended only upon the institution of judicial proceedings. The prosecution argued that under Section 1, Rule 110 of the Rules on Criminal Procedure, the filing of a case for preliminary investigation interrupts the prescriptive period.
Held: If there is a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the former must prevail. **Prescription in criminal cases is a substantive right**.[449]

Illustrative case where retroactive application of a ruling will affect substantive right:

LBP v. De Leon, 399 SCRA 376
Facts: The Supreme Court ruled that in accordance with Section 60 of the Comprehensive Agrarian Reform Law, appeals from the Special Agrarian Courts should be made by filing a petition for review instead of merely filing a notice of appeal. Petitioner filed a motion for reconsideration, in which it prayed that the ruling be applied prospectively.
Held: Before the case reached the Supreme Court, petitioner had no authoritative guideline on how to appeal decision of Special Agrarian

[445] Jacinto Jimenez, Political Law Compendium 344 (2006 ed.)
[446] Jacinto Jimenez, Political Law Compendium, 342 (2006 ed.)
[447] Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)
[448] Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)
[449] Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)

Courts in the light of seemingly conflicting provisions of Section 60 and 61 of the Comprehensive Agrarian Reform Law, because Section 61 provided that review shall be governed by the Rules of Court. The Court of Appeals had rendered conflicting decisions on this precise issue. Hence, the decision of the Supreme Court should be applied prospectively because it affects substantive right. If the ruling is given retroactive application, it will prejudice the right of appeal of petitioner because its pending appeals in the Court of Appeals will be dismissed on a mere technicality thereby, sacrificing their substantial merits.[450]

5. Rules Concerning the protection and enforcement of constitutional rights; Rules Concerning pleading, practice and procedure in courts

Power to Make Rules; Writ of Amparo.
The Rules on the Writ of Amparo is promulgated by the Court based on its power to promulgate rules for the protection and enforcement of constitutional rights. In light of the prevalence of extra legal killing and enforced disappearances, the Supreme Court resolved to exercise for the first time its power to promulgate rules to protect our people's constitutional rights.

Writ of Amparo (1991 Bar Question)

a. Etymology. "Amparo" comes from Spanish verb "amparar" meaning "to protect.

b. Nature: A writ to protect right to life, liberty and security of persons.

c. Section 1 of The Rule on the Writ of Amparo: "The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof." *(Note that not all constitutional rights are covered by this Rule; only right to life, liberty and security)*

Writ of Habeas Data. The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. (Section 1, The Rule on the Habeas Data)

In Re: Request for Creation of Special Division, A.M. No. 02-1-07-SC (2002): It was held that it is within the competence of the Supreme Court, in the exercise of its power to promulgate rules governing the enforcement and protection of constitutional rights and rules governing pleading, practice and procedure in all courts, to create a Special Division in the Sandiganbayan which will hear and decide the plunder case of Joseph Estrada.

Regulation of Demonstrations
Facts: Petitioner applied for a permit to hold a rally in from of the Justice Hall to protest the delay in the disposition of the cases of his clients. The mayor refused to issue the permit on the ground that it was prohibited by the Resolution of the Supreme Court dated July 7, 1998, which prohibited rallies within two hundred meters of any court building. Petitioners argued that the Resolution amended the Public Assembly Act in violation of the separation of powers.
Held: The existence of the Public Assembly Act does not preclude the Supreme Court from promulgating rules regulating the conduct of demonstration in the vicinity of courts to assure the people of an impartial and orderly administration of justice as mandate by the Constitution. (In re Valmonte, 296 SCRA xi)

Requirement of International Agreement
Facts: The Philippines signed the Agreement establishing the World Trade Organization. The Senate passed a resolution concurring in its ratification by the President.
Petitioners argued that Article 34 of the General Provisions and Basic Principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights is unconstitutional. Article 34 requires members to create a ***disputable presumption in civil proceedings*** that a product shown to be identical to *one produced with the use of a patented process* shall be deemed to have been obtained by *illegal use of the patented process* if the product obtained by the patented process is new or there is a substantial likelihood that the identical product was made with the use of the patented process but the owner of the patent could not determine the exact process used in obtaining the identical product. ***Petitioners argued that this impaired the rule-making power of the Supreme Court.***
Held: Article 34 should present no problem. Section 60 of the Patent Law provides a similar presumption in cases of infringement of a patented design or utility model. Article 34 does not contain an unreasonable burden as it is consistent with due process and the adversarial system. Since the Philippines is signatory to most international conventions on patents, trademarks and copyrights, **the adjustment in the rules of**

[450] Jacinto Jimenez, Political Law Compendium, 345 (2006 ed.)

procedure will not be substantial. (Tanada v. Angara, 272 SCRA 18)[451]

Power to Suspend Its Own Rules. Section 5(5) of the Constitution gives this Court the power to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts." This includes an inherent power to suspend its own rules in particular cases in order to do justice.[452]

6. Admission to the Practice of Law

Rule on Conduct of Officials. Section 90 of the Local Government Code which prohibits lawyers who are members of a local legislative body to practice law is not an infringement on the power of the Court to provide for rules for the practice of law. The law must be seen not as a rule on practice of law but as a rule on the conduct of officials intended to prevent conflict of interest. (Javellana v. DILG, 1992)

Bar Flunkers Act. After the Supreme Court has declared candidates for the bar as having flunked the examinations, Congress may not pass a law lowering the passing mark and declaring the same candidates as having passed. This would amount to not just amending the rules but reversing the Court's *application* of an existing rule. (*In re Cunanan* , 94 phil 534 (1954))

Nullification of Bar Results. In 2003, the Court nullified the results of the exams on Commercial Law when it was discovered that the Bar questions had been leaked. (Bar matter No. 1222, 2004)

7. Integration of the Bar

a. *Bar* - refers to the collectivity of all persons whose names appear in the Roll of Attorneys.

b. *Integration of the Philippine Bar* - means the official unification of the entire lawyer population of the Philippines. This requires membership and financial support (in reasonable amount) of every attorney as conditions *sine qua non* to the practice of law and the retention of his name in the Roll of Attorneys of the Supreme Court. *(In re* Integration of the Bar of the Philippines)

c. *Purpose of an integrated Bar, in general* are:

1. Assist in the administration of justice;
2. Foster and maintain, on the part of its members, high ideals of integrity, learning, professional competence, public service and conduct;
3. Safeguard the professional interests of its members;
4. Cultivate among its members a spirit of cordiality and brotherhood;
5. Provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice, and procedure, and the relation of the Bar to the Bench and to the public, and public relation relating thereto;
6. Encourage and foster legal education;
7. Promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon; and
8. Enable the Bar to discharge its public responsibility effectively (*In re Integration of the Bar of the Philippines)*

d. In re: Atty. Marcial Edillon. In this case, Atty. Edillon objects to the requirement of membership in the integrated bar as a pre-condition to the practice of law. This gave the Court the opportunity to ventilate some basic notions underlying bar integration.

1. The practice of law is a privilege that is subject to reasonable regulation by the State;
2. Bar integration is mandated by the Constitution;
3. The lawyer is not being compelled to join the association. Passing the bar examination already made him a member of the bar. The only compulsion to which he is subjected is the **payment of annual dues**, and this is justified by the need for elevating the quality of legal profession;
4. The Constitution vests in the SC plenary powers regarding admission to the bar.

e. Letter of Atty Arevalo, 2005. Payment of dues is a necessary consequence of membership in the Integrated Bar of the Philippines, of which no one is exempt. This means that the compulsory nature of payment of dues subsists as long as one's membership in the IBP remains regardless of the lack of practice of, or the type of practice, the member is engaged in.[453]

8. Congress and the Rules of Court

Bernas Primer: Rules issued by the Supreme Court may be repealed, altered, or supplemented by Congress because Congress has plenary legislative power. The silence of the Constitution on the subject can only be interpreted as meaning that there is no intention to diminish that plenary power. In fact, RA 8974 which requires full payment before the sate may exercise proprietary rights, contrary to Rule 67 which requires a deposit, was recognized by Court in *Republic v. Gingoyon*, *2005*. (*An earlier obiter dictum in Echegaray v. Sec. of Justice, 1999, said that Congress has no power to amend Rules.*

[451] Jacinto Jimenez, Political Law Compendium, 347 (2006 ed.)
[452] *Lim et al v CA,* G.R. No. 149748, November 16, 2006.
[453] Letter of Atty. Cecilio Y. Arevalo, Requesting Exemptions from Payment of IBP Dues, May 9, 2005.

This was repeated by Puno and Carpio in dissent in Republic v. Gingoyon)[454]

Nachura (2006): Congress cannot amend the Rules of Court. "The 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive." Echagaray v. Secretary of Justice (1999)

ASM: Follow Bernas' view. Article XVIII, Section 10 provides: "The provisions of the existing Rules of Court, judiciary acts, and procedural laws not inconsistent with this Constitution shall remain operative ***unless amended or repealed by the Supreme Court or the Congress***"

H. Appointment of Court Personnel

The authority of the Supreme Court to appoint its own official and employees is another measure intended to safeguard the independence of the Judiciary. However, the Court's appointing authority must be exercised "in accordance with the Civil Service Law."[455]

Note that Section 5(6) empowers the Supreme Court not only to appoint its own officials and employees but of the Judiciary itself.

It should also be recalled that courts may be given authority by Congress "to appoint officers lower in rank." (art. 7 §16)

I. Administrative Supervision of Courts

Strengthens Independence. Section 6 provides that the Supreme Court shall have administrative supervision by the Supreme Court over all lower courts and the personnel thereof. It is a significant innovation towards strengthening the independence of the judiciary. Before 1973 Constitution, there was no constitutional provision on the subject and administrative supervision over the lower courts and their personnel was exercised by the Secretary of Justice.[456] The previous set-up impaired the independence of judges who tended to defer to the pressures and suggestions of the executive department in exchange for favorable action on their requests and administrative problems.[457]

Exclusive Supervision. Article VIII, Section 6 exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take proper administrative action against them if they commit any violation thereof. *No other branch of government may intrude into this power, without running afoul to the doctrine of separation of powers.* (Maceda v. Vasquez)

Ombudsman and SC's Power of Supervision. The Ombudsman may not initiate or investigate a criminal or administrative complaint before his office against a judge; the Ombudsman must first indorse the case to the Supreme Court for appropriate action. (Fuentes v. Office of Ombudsman, 2001)

Administrative Proceeding, Confidential. Administrative proceedings before the Supreme Court are confidential in nature in order to protect the respondent therein who may turn out to be innocent of the charges. (Godinez v. Alano, 1999)

According to Bernas, the power of administrative supervision of the Supreme Court, includes the power [sitting en banc] to discipline judges of lower courts, or order their dismissal.[458]

J. Disciplinary Powers

> **Section 11**
> The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

1. Power to Discipline

The power of the Supreme Court to discipline judges of inferior courts or to order their dismissal is exclusive. It may not be vested in any other body. Nor may Congress pass a law that judges of lower courts are removable by impeachment.[459]

2. Disciplinary Actions

Besides removal, such other disciplinary measures as suspension, fine and reprimand can be meted out by the Supreme Court on erring judges.[460]

[454] Bernas Primer at 352 (2006 ed.)
[455] Bernas Commentary, p 979 (2003 ed).
[456] Bernas Commentary, p 979 (2003 ed).
[457] Cruz, Philippine Political Law, p. 264 (1995 ed).
[458] Bernas Commentary, p 979 (2003 ed).
[459] Bernas Commentary, p 988 (2003 ed).
[460] Cruz, Philippine Political Law, p. 267 (1995 ed).

3. Requirement for Disciplinary Actions

Disciplinary Action	Decision
Dismissal of judges, Disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos (*People v. Gacott*)]	Decision *en banc* (by a vote of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon)
Other disciplinary actions	Decision of a division is sufficient (People v. Gacott)

4. SC Determines what "good behavior" is.

Judges of lower courts shall hold office during **good behavior** until they reach the age of seventy years or become **incapacitated** to discharge the duties of their office.

It is submitted that the Supreme Court alone can determine what good behavior is, since the SC alone can order their dismissal.[461]

5. SC Determines whether a judge has become incapacitated

The power to determine incapacity is part of the overall administrative power which the Supreme Court has over its members and over all the members of the judiciary.[462]

K. Contempt Powers

One of the essential powers of every court under our system of government is that of punishing for contempt persons who are guilty of disobedience to its orders or for disrespect to its authority. The punishment is either imprisonment or fine.[463]

"While it is sparingly to be used, yet the power of courts to punish for contempts is a necessary and integral part of the independence of judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration, whose judgments and decrees would only be advisory."[464]

L. Annual Report

Section 16. The Supreme Court shall, within thirty days from the opening of each regular session of the Congress, submit to the President and the Congress an annual report on the operations and activities of the Judiciary

The purpose of this provision is not to subject the Court to the President and to the Congress but simply to enable the judiciary to inform government about its needs. (I RECORD 510-512)[465]

The annual report required under this provision can be the basis of appropriate legislation and government policies intended to improve the administration of justice and strengthen the independence of judiciary.[466]

VI. Judicial Review

Definition of Judicial Review
Constitutional Supremacy
Functions of Judicial Review
Who May Exercise
Requisites of Judicial Review
Political Questions
Effect of Declaration of Unconstitutionality
Partial Unconstitutionality
Judicial Review by Lower Courts
Modalities of Constitutional Interpretation

A. Definition

Judicial review is the power of the courts to test the validity of governmental acts in light of their conformity to a higher norm (e.g. the constitution.) –asm

The power of judicial review is the Supreme Court's power to declare a law, treaty, international or executive agreement, presidential decree, proclamation, order, instruction, ordinance, or regulation unconstitutional. This power is explicitly granted by Section 5(2), (a) and (b).[467] Judicial Review is an aspect of Judicial Power.[468]

Theory of Judicial Review. The Constitution is the supreme law. It was ordained by the people, the ultimate source of all political authority. It confers limited powers on the national government. x x x If the government consciously or unconsciously oversteps these limitations there must be some authority competent to hold it in control, to thwart its unconstitutional attempt, and thus to vindicate and preserve inviolate the will of the people as expressed in the Constitution. This power the courts exercise. This is the beginning and the end of the theory of judicial review.[469]

[461] Bernas Commentary, p 987(2003 ed).
[462] Bernas Commentary, p 988(2003 ed).
[463] Sinco, Philippine Political Law, p 372 (1954ed).
[464] Gompers v. Buck's Stove and Range co., 221 US 418.
[465] Bernas Commentary, p 1000 (2003 ed).
[466] Cruz, Philippine Political Law, p. 277 (1995 ed).
[467] Bernas Primer at 341 (2006 ed.)
[468] Bernas Commentary, p 937(2003 ed).
[469] Howard L. MacBain, "Some Aspects of Judicial Review," Bacon Lectures on the Constitution of the United States (Boston: Boston University Heffernan Press, 1939), pp. 376-77 cited in David v. Arroyo.

Judicial Review in Philippine Constitution. Unlike the US Constitution[470] which does not provide for the exercise of judicial review by their Supreme Court, the Philippine Constitution expressly recognizes judicial review in Section 5(2) (a) and (b) of Article VIII of the Constitution.

B. Principle of Constitutional Supremacy

Judicial review is not an assertion of superiority by the courts over the other departments, but merely an expression of the supremacy of the Constitution.[471] Constitutional supremacy produced judicial review, which in turn led to the accepted role of the Court as "the ultimate interpreter of the Constitution."[472]

C. Functions of Judicial Review

1. ***Checking***- invalidating a law or executive act that is found to be contrary to the Constitution.
2. ***Legitimating-*** upholding the validity of the law.
   Rule on the Double Negative- Uses the term "not unconstitutional"; the court cannot declare a law constitutional because it already enjoys a presumption of constitutionality
3. ***Symbolic***[473]- to educate the bench and the bar as the controlling principles and concepts on matters of great public importance.

In a Separate Opinion in Francisco v. HR, Mr. Justice Adolf Azcuna remarked:

> "The function of the Court is a necessary element not only of the system of checks and balances, but also of a ***workable and living Constitution***. For absent an agency, or organ that can rule, with finality, as to what the terms of the Constitution mean, there will be ***uncertainty if not chaos*** in governance... This is what… Hart calls the need for a Rule of Recognition in any legal system…"

D. Who May Exercise

1. Supreme Court
2. Inferior Courts

[470] The case of *Marbury v. Madison* established the doctrine of judicial review as a core legal principle in American constitutional system: "So if a law be in opposition to the constitution; of both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."

[471] Angara v. Electoral Commission, 63 Phil 139.

[472] *See* Cooper v. Aaron, 358 US 1 (1956)

[473] "The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees." (Salonga v. Pano, 134 SCRA 438, 1985)

E. Requisites of Judicial Inquiry/Judicial Review (1994 Bar Question)

Essential Requisites

1. There must be an **actual case** or controversy; The question involved must be **ripe** for adjudication.
2. The question of constitutionality must be raised by the **proper party**;

Auxiliary Rules

3. The constitutional question must be raised at the **earliest possible opportunity**;
4. The decision of the constitutional question must be **necessary** to the determination of the case itself.

(Read the case of Francisco v. HR and David v. Arroyo in the original)

1. Actual Case

Actual Case or controversy involves a **conflict of legal rights**, an assertion of opposite legal claims susceptible of judicial determination.[474]

The case must **not** be:

1. Moot or academic or
2. Based on extra-legal or other similar consideration not cognizable by courts of justice.[475]
3. A request for advisory opinion.[476]
4. Hypothetical or feigned constitutional problems
5. Friendly suits collusively arranged between parties without real adverse interests[477]

Moot Case. A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.

However, Courts will decide cases, otherwise moot and academic, if:

1. There is a grave violation of the Constitution;
2. The exceptional character of the situation and the paramount public interest is involved
3. When the constitutional issue raised requires formulation of controlling

[474] Cruz, Philippine Political Law, p. 241 (1995 ed).

[475] Cruz, Philippine Political Law, p. 241 (1995 ed); *See* Cawaling v. COMELEC, 368 SCRA 453)

[476] Cruz, Philippine Political Law, p. 242 (1995 ed).

[477] Bernas Commentary, p 938(2003 ed).

principles to guide the bench, the bar, and the public; and

4. The case is capable of repetition yet evading review. (Province of Batangas vs. Romulo, 429 SCRA 736; David v. Arroyo (2006) Quizon v. Comelec, G.R. No. 177927, February 15, 2008.)

The requirement of actual controversy encompasses concepts such as ripeness, standing, and the prohibition against advisory judicial rulings (BP Chemicals v. UCC, 4 F.3d 975)

Ripeness Doctrine. The requirement that a case be ripe for judgment before a court will decide the controversy. **Ripeness** refers to readiness for adjudication,

Rationale. To prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements.

When Not Ripe. A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.[478]

Ripeness and Standing.
A simple description of the requirements of standing and ripeness is found in the words of Justice Stone in *Nashville v. Wallace*. In that opinion he referred to: "valuable legal rights… threatened with imminent invasion." The valuable legal rights constitute the standing and the **threat of *imminent* invasion constitute the ripeness**.[479]

2. Standing/Proper Party (1992, 1995 Bar Question)

Proper Party- A proper party is one who has sustained or is in immediate danger of sustaining an injury in result of the act complained of.[480]

Locus Standi refers to the ***right of appearance*** in a court of justice on a given question.

General Rule:
Direct Interest Test: The persons who impugn the validity of a statute must have a "*personal and substantial interest in the case such that he has sustained or will sustain, direct injury as a result.*
Exceptions:

1. Cases of transcendental importance or of paramount public interest or involving an issue of overarching significance.
2. Cases of Proclamation of martial law and suspension of the privilege of the writ of habeas corpus where ***any citizen*** may challenge the proclamation of suspension. (art.7 §18)
3. The right to information on matters of public concern and the right to access to public documents has been recognized as accruing to mere citizenship. (Legaspi v. CSC, 150 SCRA 530 (1987)
4. Facial Challenge (?)

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REQUISITES of standing:
A citizen can raise a constitutional question only when:

1. **Injury:** He can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government;
2. **Causation:** The injury is fairly traceable to the challenged action; and
3. **Redressability:** A favorable action will likely redress the injury. (Francisco v. Fernando GR 166501, 2006)

In a **public suit,** where the plaintiff asserts a public right in assailing an allegedly illegal official action, our Court adopted the "direct injury test" in our jurisdiction. (David v. Arroyo)

Direct Injury Test: The persons who impugn the validity of a statute must have a "**personal and substantial interest in the case such that he has sustained or will sustain, direct injury as a result**. (David v. Arroyo) (*See* People v. Vera, 65 Phil 58, 89 (1937)).

By way of summary, the following rules may be culled from the cases decided by the Supreme Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

1. the cases involve constitutional issues
2. for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

[478] *Texas v. United States*, 523 U.S. 296, 300 (1998).
[479] Jerre S. Williams, Constitutional Analysis 16, (1979).
[480] Ex Parte Levitt, 303 US 633; People v. Vera 65 Phil 58, 89 (1937).

3. for **voters**, there must be a showing of obvious interest in the validity of the election law in question;
4. for **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early;
5. for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators [**David v. Arroyo** G.R. No. 171396 (2006)]

Illustrative Cases showing existence of standing:

Facts: Petitioners filed a case as **taxpayers** questioning the validity of the contract between DOTC and respondent by virtue of which respondent agreed to build and lease to the DOTC a light railway transit system. Respondent claimed that petitioners had no standing to file the action.
Held: Taxpayers may file action questioning contracts entered into by government on the ground that the contract is in contravention of the law. (Tatad v. Garcia, 243 SCRA 436)[481]

Facts: Petitioners who were Filipino **citizens** and taxpayers, questioned the constitutionality of the IPRA on the ground that it deprived the State of ownership over lands of the public domain and the natural resources in them in violation of Section 2, Article XII of the Constitution.
Held: As, citizens, petitioners possess the public right to ensure that the national patrimony is not alienated and diminished in violation of the Constitution. Since the government holds it for the benefit of the Filipinos, a citizen had sufficient interest to maintain a suit to ensure that any grant of concession covering the national patrimony strictly complies with the constitutional requirements.
In addition, the IPRA appropriate funds. Thus, it is a valid subject of a taxpayer's suit. (Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128)[482]

Facts: Petitioner, a **senator**, questioned the constitutionality of Administrative Order No. 308 which provided for the establishment of a national computerized identification reference system. Petitioner contends that the AO usurps legislative power. The government questioned his standing to file the case.
Held: As a senator, petitioner is possessed of the requisite standing to bring suit raisin the issue that the issuance of AO 308 is a usurpation of legislative power. (Ople v. Torres, 293 SCRA 141)[483]

Facts: Petitioners, who are minors, filed a case to compel the Secretary of Environment and Natural Resources to cancel the timber license agreements and to desist from issuing new ones on the ground that deforestation has resulted in damage to the environment. The Secretary of argued that petitioners has no cause of action.
Held: SC said that Petitioners have a right to a sound environment, this is incorporated in Section 16 of Article II.
SC also said that Petitioners have personality to sue based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. *"We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generation. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced ecology is concerned."* (Oposa v. Factoran, 1993)

Illustrative Cases showing absence of standing:

Facts: Upon authorization of the President, the PCGG ordered the sale at public auction of paintings by old masters and silverware alleged to be illgotten wealth of former President Marcos, his relatives, and friends. Petitioners, who were Filipino citizens, taxpayers, and artist, filed a petition to restrain the auction.
Held: Petitioners have no standing to restrain the public auction. The paintings were donated by private persons to the MMA who owns them. The pieces of silverware were given to the Marcos couple as gifts on their silver wedding anniversary. Since the petitioners are not the owners of the paintings and the silverware, they do not possess any right to question their dispositions. (Joya v. PCGG, 225 SCRA 586)[484]

Facts: Petitioner filed a petition in his capacity as a **taxpayer** questioning the constitutionality of the creation of 70 positions for presidential advisers on the ground that the President did not have the power to create these positions.
Held: Petitioner has not proven that he has sustained any injury as a result of the appointment of the presidential advisers. (Gonzales v. Narvasa, 337 SCRA 437)[485]

Facts: In view of the increase in violent crimes in Metropolitan Manila, the President ordered the PNP and the Philippine Marines to conduct joint visibility patrols for the purpose of crime prevention and suppression. Invoking its responsibility to uphold the rule of law, the Integrated Bar of the Philippines questioned the validity of the order.
Held: the mere invocation of the IBP of the Philippines of its duty to preserve the rule of law is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by the whole citizenry. The IBP has not shown any specific injury it has suffered or may suffer by virtue of the questioned order. The IBP projects as injurious the militarization of law enforcement which might threaten democratic institutions. The presumed

[481] Jacinto Jimenez, Political Law Compendium, 333 (2006 ed.)
[482] Jacinto Jimenez, Political Law Compendium, 334 (2006 ed.)
[483] Jacinto Jimenez, Political Law Compendium, 336 (2006 ed.)
[484] Jacinto Jimenez, Political Law Compendium, 337 (2006 ed.)
[485] Jacinto Jimenez, Political Law Compendium, 338 (2006 ed.)

injury is highly speculative. (IBP v. Zamora, 338 SCRA 81)[486]

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Transcendental Importance Being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. Thus, the Court has adopted a rule that even where the petitioners have failed to show direct injury, they have been allowed to sue under the principle of "**transcendental importance**." [**David v. Arroyo** G.R. No. 171396 (2006)]

When an Issue Considered of Transcendental Importance:
An issue is of transcendental importance because of the following:

(1) the character of the funds or other assets involved in the case;

(2) the presence of a clear disregard of a constitutional or statutory prohibition by an instrumentality of the government; and

(3) the lack of any other party with a more direct and specific interest in raising the question. (Francisco vs. House of Representatives, 415 SCRA 44; Senate v. Ermita G.R. No. 169777 (2006))

Facial Challenge[487].
The established rule is that a party can question the validity of a statute only if, as applied to him, it is unconstitutional. The exception is the so-called "facial challenge." But the only time a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the "overbreadth doctrine" permits a party to challenge to a statute even though, as applied to him, it is not unconstitutional, but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face", rather than "as applied", is permitted in the interest of preventing a "chilling effect" on freedom of expression (Justice Mendoza's concurring opinion in Cruz v. DENR, G.R. No. 135395, December 06, 2000) A facial challenge to a legislative act is the most difficult challenge to mount successfully since the challenge must establish that no set of circumstances exists under which the act would be valid. (Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001)[488]

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Bernas: In sum, it may be said that the concept of *locus standi* as it exists in Philippine jurisprudence now has departed from the rigorous American concept.[489]

3. Earliest Opportunity

General Rule: Constitutional question must be raised at the earliest possible opportunity, such that if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered in trial, cannot be considered on appeal.

Exceptions:

1. In criminal cases, the constitutional question can be raised at any time in the discretion of the court.
2. In civil cases, the constitutional question can be raised at any stage if it is necessary to the determination of the case itself.
3. In every case, except where there is estoppel, the constitutional question may be raised at any stage if it involves jurisdiction of the court.[490]

4. Necessity/ Lis Mota

Rule: The Court will not touch the issue of unconstitutionality unless it really is **unavoidable or is the very *lis mota*.**[491]

Reason: The reason why courts will as much as possible avoid the decision of a constitutional question can be traced to the doctrine of separation of powers which enjoins upon each department a proper respect for the acts of the other departments. The theory is that, as the joint act of the legislative and executive authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted. Hence, as long as there is some other basis that can be used by the courts for its decision, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds.[492]

Motu Propio Exercise of Judicial Review. While courts will not ordinarily pass upon

[486] Jacinto Jimenez, Political Law Compendium, 339 (2006 ed.)

[487] Facial Challenge is a manner of challenging a statute in court, in which the plaintiff alleges that the statute is always, and under all circumstances, unconstitutional, and therefore void.

[488] Antonio B. Nachura, Outline/Reviewer in Political Law 23 (2006 ed.)

[489] Bernas Commentary, p 949(2003 ed).

[490] Cruz, Philippine Political Law, p. 247 (1995 ed).

[491] Bernas Commentary, p 952(2003 ed).

[492] Cruz, Philippine Political Law, p. 247 (1995 ed).

constitutional questions which are not raised in the pleadings, a court is not precluded from inquiring into its own jurisdiction or be compelled to enter a judgment that it lacks jurisdiction to enter. Since a court may determine whether or not it has jurisdiction, it necessarily follows that it can inquire into the constitutionality of a statute on which its jurisdiction depends. (Fabian v. Desierto, 295 SCRA 470)[493]

F. Political Questions (1995 Bar Question)

Justiciable v. Political Question
Definition of Political Question
Guidelines (Baker v. Carr)
Justiciable v. Political
Suspension of Writ and Proclamation of ML
Calling Our Power of the President
Impeachment of a Supreme Court Justice

1. Justiciable v. Political Questions

The distinction between justiciable and political questions can perhaps best be illustrated by the suspension or expulsion of a member of Congress, which must be based upon the ground of "disorderly behavior" and concurred in by at least 2/3 of all his colleagues. The determination of what constitutes disorderly behavior is a political question and therefore not cognizable by the court; but the disciplinary measure may nonetheless be disauthorized if it was supported by less than the required vote. The latter issue, dealing as it does with a procedural rule the interpretation of which calls only for mathematical computation, is a justiciable question.[494]

2. Political Questions, Definition

Political questions are those questions which under the Constitution are:

1. To be decided by the people in their sovereign capacity, or
2. In regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.[495] (Tanada v. Cuenco, 1965)

Political questions connotes "***questions of policy.***" It is concerned with ***issues dependent upon the wisdom***, not legality, of a particular measure. (Tanada v. Cuenco)

3. Guidelines for determining whether a question is political.

Textual Kind

1. **A textually demonstrable constitutional commitment of the issue to a political department;**

Functional Kind

2. **Lack of judicially discoverable and manageable <u>standards</u> for resolving it;**
3. **Impossibility of deciding a case without an <u>initial determination</u> of a kind clearly for non-judicial discretion; (Baker v. Carr, 369 US 186 (1962))[496]**

Prudential Type

4. Impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government;
5. An unusual need for unquestioning adherence to a political decision already made;
6. Potentiality of embarrassment from multifarious pronouncements by various departments. (Baker v. Carr, 369 US 186 (1962)

(Bernas submits that the Grave Abuse Clause has eliminated the prudential type of political questions from Philippine jurisprudence.[497] Hence, the question is not political even there is an "unusual need for questioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."[498])

Examples of Textual Kind[499]:

1. ***Alejandrino v. Quezon 26 Phil 83 (1924)*** : The SC through Justice Malcolm held, "Mandamus will not lie agasint the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control."
2. ***Osmena v. Pendatun 109 Phil 863 (1960):*** The SC refused to interpose itself in the matter of suspension of Osmena Jr., for a speech delivered on the floor of Congress. Whether he committed "disorderly behavior" was something in regard to which full discretionary authority had been given to the legislature.

493 Jacinto Jimenez, Political Law Compendium, 330 (2006 ed.)

494 Cruz, Philippine Political Law, p. 78(1995 ed).

495 Cruz: Where the matter falls under the discretion of another department or especially the people themselves, the decision reached is in the category of a political question and consequently may not be the subject of judicial review.
Accordingly, considerations affecting the wisdom, efficacy or practicability of a law should come under the exclusive jurisdiction of Congress. So too, is the interpretation of certain provisions of the Constitution, such as the phrase "other high crimes" as ground for impeachment.

496 Bernas Commentary, p 959(2003 ed); Bernas Primer at 348 (2006 ed.)

497 *See* Bernas Commentary, p 959 (2003 ed)

498 Bernas Primer at 348 (2006 ed.)

499 Bernas Commentary, p 954(2003 ed).

3. ***Arroyo v. De Venecia, 1997:*** The issue in this case was whether the Court could intervene in a case where the House of Representatives was said to have disregarded its own rule. The Court said it could not because the matter of formulating rules have been textually conferred by the Constitution on Congress itself. Hence, provided that no violation of a constitutional provisions or injury to private rights was involved, the Court was without authority to intervene.
4. ***Santiago v. Guingona, 1998:*** Disspute involved is the selection of a Senate Minority leader whose position is not created by the Constitution but by Congressional rules.

Examples of Functional Kind[500]:

1. ***Tobias v. Abalos, 1994; Mariano v. COMELEC, 1995"*** Apportionment of representative districts is not a political question because there acre constitutional rules governing apportionment.
2. ***Daza v. Singson, 1989; Coseteng v. Mitra, 1990; Guingona v. Gonzales, 1992:*** The Court intervened in the manner of forming the Commission on Appointments.
3. ***Bondoc v. Pineda:*** The Court invalidated the expulsion of a member of the House Electoral Tribunal.

(All these were done by the Court because it found applicable legal standards.)

4. Grave Abuse Clause and Political Questions

Again, the 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to separation of powers, to the doctrine on "political questions" or to the "enrolled bill" rule.[501] (1995 Bar Question)

5. Suspension of the Writ of HC and Proclamation of Martial Law

The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question.[502]

6. President's action in calling out the armed forces

It may be gathered from the broad grant of power that the actual use to which the President puts the armed forces, is unlike the suspension of the privilege of writ of habeas corpus, not subject to judicial review.[503]

But, while the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom and that it cannot be called upon to overrule the President's wisdom or substitute its own, it stressed that "this does not prevent an examination of **whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion**. (IBP v. Zamora) Judicial inquiry can *go no further* than to satisfy the Court *not* that the President's decision is *correct,* but that "the President did not act *arbitrarily*." Thus, **the standard is not correctness, but arbitrariness**. It is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings. (***IBP v. Zamora cited in David v. Arroyo***)

6. Impeachment Case against a Supreme Court Justice.

Facts: On June 2, 2003, former President Joseph Estrada filed an impeachment cases against the Chief Justice and seven Associate Justices of the Supreme Court . The complaint was endorsed by three congressmen and referred to the Committee on Justice of the House of Representatives. On October 22, 2003, the Committee on Justice voted to dismiss the complaint for being insufficient in substance. The Committee on Justice had not yet submitted its report to the House of Representatives.

On October 23, 2003, two congressmen filed a complaint a complaint for impeachment against the Chief Justice in connection with the disbursement against the Chief Justice in connection with the disbursement of the Judiciary Development Fund. The complaint was accompanied by a resolution of endorsement/impeachment was accompanied by a resolution of endorsement/impeachment signed by at least one-third of the congressmen.

Several petitions were filed to prevent further proceedings tin the impeachment case on the ground that the Constitution prohibits the initiation of an impeachment proceeding against the same official more than once the same period of one year. ***Petitioners plead for the SC to exercise the power of judicial review to determine the validity of the second impeachment complaint***.

The House of Representatives contend that impeachment is a political action and is beyond the reach of judicial review. Respondents Speaker De Venecia, *et. al.* and intervenor Senator Pimentel raise the novel argument that the Constitution has excluded impeachment proceedings from the coverage of judicial review. Briefly stated, it is the position of respondents Speaker De Venecia *et. al.* that impeachment is a political action which cannot assume a judicial character. Hence, any question, issue or incident arising at any stage of the impeachment proceeding is beyond the reach of judicial

[500] Bernas Commentary, p 957(2003 ed).
[501] *See* Bernas Commentary, p 919-920 (2003 ed).
[502] Cruz, Philippine Political Law, p. 214 (1995 ed).
[503] Bernas Commentary, p 866 (2003 ed)

review. For his part, intervenor Senator Pimentel contends that the Senate's "sole power to try" impeachment cases (1) entirely excludes the application of judicial review over it; and (2) necessarily includes the Senate's power to determine constitutional questions relative to impeachment proceedings. They contend that the exercise of judicial review over impeachment proceedings is inappropriate since it runs counter to the framers' decision to allocate to different fora the powers to try impeachments and to try crimes; it disturbs the system of checks and balances, under which impeachment is the only legislative check on the judiciary; and it would create a lack of finality and difficulty in fashioning relief

Held: That granted to the Philippine Supreme Court and lower courts, *as expressly provided for in the Constitution*, is not just a power but also a **duty**, and it was **given an expanded definition** to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality. that granted to the Philippine Supreme Court and lower courts, *as expressly provided for in the Constitution*, is not just a power but also a **duty**, and it was **given an expanded definition** to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.
The Constitution provides for several limitations to the exercise of the power of the House of Representatives over impeachment proceedings. These limitations include the one-year bar on the impeachment of the same official. It is well within the power of the Supreme Court to inquire whether Congress committed a violation of the Constitution in the exercise of its functions. (Francisco v. House of Representatives, 415 SCRA 44)
x-----x
Respondents are also of the view that judicial review of impeachments undermines their finality and may also lead to conflicts between Congress and the judiciary. Thus, they call upon this Court to exercise judicial statesmanship on the principle that "whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride
Held: "Did not the people also express their will when they instituted the safeguards in the Constitution? This shows that the Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits, or in the language of *Baker v. Carr*,[57] "judicially discoverable standards" for determining the validity of the exercise of such discretion, through the power of judicial review."

G. Effect of Declaration of Unconstitutionality

Orthodox View: An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative, as if it had not been passed at all.[504]
"When courts declare a law to inconsistent with the Constitution, the former shall be void and the latter shall govern." (Article 7 of the New Civil Code)

Modern View: Certain legal effects of the statute prior to its declaration of unconstitutionality may be recognized. "The actual existence of a statute prior to such a determination of constitutionality is an **operative fact** and may have consequences which cannot always be erased by a new judicial declaration."[505]

H. Partial Unconstitutionality

Also in deference to the doctrine of separation of powers, courts hesitate to declare a law totally unconstitutional and as long as it is possible, will salvage the valid portions thereof in order to give effect to the legislative will.[506]

Requisites of Partial Unconstitutionality:

1. The Legislature must be willing to retain the valid portion(s).[507]
2. The valid portion can stand independently as law.

I. Judicial Review by Lower Courts

Legal Bases of lower courts' power of judicial review:

1. ***Article VIII, Section 1.*** Since the power of judicial review flows from judicial power and since inferior courts are possessed of judicial power, it may be fairly inferred that the power of judicial review is not an exclusive power of the Supreme Court.
2. ***Article VII, Section 5(2).*** This same conclusion may be inferred from Article VIII, Section 5(2), which confers on the Supreme Court ***appellate*** jurisdiction over judgments and decrees of lower courts in certain cases.

Note: While a declaration of unconstitutionality made by the Supreme Court constitutes a precedent binding on all, a similar decision of an inferior court binds only the parties in the case.[508]

J. Modalities of Constitutional Interpretation

1. ***Historical***- Analyzing the intention of the framers and the Constitution and the circumstances of its ratification.
2. ***Textual-*** Reading the language of the Constitution as the man on the street would.
3. ***Structural-*** Drawing inferences from the architecture of the three-cornered power relationships.

[504] *See* Norton v. Shelby County, 118 US 425.

[505] Chicot County Drainage Dist. V. Baxter States Bank 308 US 371.

[506] Cruz, Philippine Political Law, p. 251 (1995 ed); *See* Senate v. Ermita.

[507] Usually shown by the presence of separability clause. But even without such separability clause, it has been held that if the valid portion is so far independent of the invalid portion, it may be fair to presume that the legislature would have enacted it by itself if they had supposed that they could constitutionally do so.

[508] Bernas Commentary, p 964 (2003 ed).

4. ***Doctrinal***- Rely on established precedents
5. ***Ethical-*** Seeks to interpret the Filipino moral commitments that are embedded in the constitutional document.
6. ***Prudential***- Weighing and comparing the costs and benefits that might be found in conflicting rules.[509]

VII. Deciding a Case

Process of Decision Making
Cases Decided En Banc
Cases Decided in Division

A. Process of Decision Making

In Consulta
Certification of Consultation
Explanation on Abstention etc.
Statement of Facts and the Law
Denial of MR or Petition for Review
Decisions of the Court
Period for Decision
Certification and Explanation

> **Section 13**. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Members who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

> **Section 14**. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

> **Section 15**. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
> (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

1. "In Consulta"[510]

The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. (Section 13)

2. Certification of Consultation and Assignment

A certification as regards consultation and assignment signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. (Section 13)

Purpose. The purpose of certification is to ensure the implementation of the constitutional requirement that decisions of the Supreme Court are reached after consultation with members of the court sitting en banc or in division before the case is assigned to a member thereof for decision-writing. (Consing v. CA, 1989)
The certification by the Chief Justice that he has assigned the case to a Justice for writing the opinion will not expose such Justice to pressure since the certification will not identify the Justice.[511]

Effect of Absence of Certification. The absence of the certification would not necessarily mean that the case submitted for decision had not been reached in consultation before being assigned to one member for writing of the opinion of the Court since the regular performance of duty is presumed. The lack of certification at the end of the decision would only serve as evidence of failure to observe certification requirement and may be basis for holding the official responsible for the omission to account therefore. Such absence of certification would not have the effect of invalidating the decision.[512]

Minute Resolution. Minute resolutions need not be signed by the members of the Court who took part in the deliberations of a case nor do they require the certification of the Chief Justice. (Borromeo v. CA, 1990)

3. Explanation on Abstention etc.

Any Member who:

1. Took no part, or
2. Dissented, or

[509] Bernas Commentary, p 964 (2003 ed).

[510] After deliberations by the group.

[511] Bernas Primer at 361 (2006 ed.)

[512] Bernas Primer at 362 (2006 ed.)

3. Abstained

from a decision or resolution must state the reason therefore (Section 13)

The reason for the required explanation is to encourage participation.[513]

4. Statement of Facts and the Law

Rule
Purpose of Requirement
Where Applicable
Where Not Applicable
Illustration of Sufficient Compliance
Illustration of Insufficient Compliance

Rule

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. (Section 14)

A decision need not be a complete recital of the evidence presented. So long as the factual and legal basis are clearly and distinctly set forth supporting the conclusions drawn therefrom, the decision arrived at is valid.
However, it is imperative that the decision not simply be limited to the dispositive portion but must state the nature of the case, summarize the facts with reference to the record, and contain a statement of applicable laws and jurisprudence and the tribunal's statement and conclusions on the case.[514]

Requirement, not jurisdictional. Although the 1st paragraph of Section 14 is worded in mandatory language, it is nonetheless merely directory. It has been held that the "requirement does not go to the jurisdiction of the court"[515] (1989 Bar Question)

Purpose

To inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of applicable laws. There are various reasons for this:

1. To assure the parties that the judge studied the case;
2. To give the losing party opportunity to analyze the decision and possibly appeal or, alternatively, convince the losing party to accept the decision in good grace;
3. To enrich the body of case law, especially if the decision is from the Supreme Court. (Fransisco v. Permskul, 1989)

Where Applicable

The constitutional requirement (Section 14, 1st paragraph) that a decision must express clearly and distinctly the facts and law on which it is based as **referring only to *decisions*[516]**.
Resolutions disposing of petitions fall under the constitutional provision (Section 14, 2nd paragraph) which states that "no petition for review…shall be refused due course… without stating the legal basis therefore." (Borromeo v. CA) [517]

Where not Applicable

It has been held that the provision is not applicable to:

1. Decision of the COMELEC[518];
2. Decision of military tribunals which are not courts of justice.[519]
3. Mere orders are not covered since they dispose of only incidents of the case, such as postponements of the trial. The only exception is an order of dismissal on the merits[520]
4. This requirement does not apply to a minute resolution dismissing a petition for habeas corpus, certiorari and mandamus, provided a legal basis is given therein. (Mendoza v. CFI 66 SCRA 96)
5. Neither will it apply to administrative cases. (Prudential Bank v. Castro, 158 SCRA 646)

Illustrative Cases of Sufficient Compliance:

Facts: The Court of Appeals affirmed the conviction of petitioner for estafa. Petitioner argued that the decision did not comply with the Constitution because instead of making its own finding of facts, the Court of Appeals adopted the statement of facts in the brief filed by the Solicitor General.
Held: There is no prohibition against court's adoption of the narration of facts made in the brief instead of rewriting them in its own words. (Hernandez v. CA, 228 SCRA 429)[521]

Memorandum Decisions.
The rule remains that the constitutional mandate saying that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," does not

[513] Bernas Primer at 361 (2006 ed.)
[514] Antonio B. Nachura, Outline/Reviewer in Political Law 295 (2006 ed.)
[515] Cruz, Philippine Political Law, p. 269 (1995 ed).
[516] Decision is described as a judgment rendered after the presentation of proof or on the basis of stipulation of facts. (Cruz, Philippine Political Law, p. 269 (1995 ed))
[517] Bernas Primer at 362 (2006 ed.)
[518] Nagca v. COMELEC, 112 SCRA 270 (1982).
[519] Cruz, Philippine Political Law, p. 273 (1995 ed).
[520] Cruz, Philippine Political Law, p. 269 (1995 ed).
[521] Jacinto Jimenez, Political Law Compendium, 350 (2006 ed.)

preclude the validity of "memorandum decisions," which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. This rule has been justified on the grounds of expediency, practicality, convenience and docket status of our courts.[522] (Solid Homes v. Laserna, 2008)

Memorandum decisions can also speed up the judicial process, a desirable thing and a concern of the Constitution itself. Where a memorandum decision is used, the decision adopted by reference must be attached to the Memorandum for easy reference. Nonetheless, the Memorandum decision should be used sparingly and used only where the facts as in the main are accepted by both parties and in simple litigations only. (Fransisco v. Permskul, 1989)

Illustrative Cases of Insufficient Compliance

In Dizon v. Judge Lopez, 1997, the decision, which consisted only of the dispositve portion (denominated a *sin perjuicio*[523] judgment) was held invalid.

Facts: Respondents sold the same property to two different buyers. Petitioners, the first buyers, filed a case to annul the title of the second buyer. The lower court rendered a decision dismissing the complaint. *The decision stated that the plaintiffs failed to prove their case and there was no sufficient proof of bad faith on the part of the second buyer*.
Held: The decision does not comply with the requirement under the Constitution that it should contain a clear and distinct statement of facts. It contained conclusions without stating the facts which served as their basis. (Valdez v. CA, 194 SCRA 360)

Facts: Petitioners filed an action to annul the foreclosure sale of the property mortgaged in favor of respondent. After petitioners had rested their case, respondent filed a demurrer to the evidence. *The trial court issued an order dismissing the case on the ground that the evidence showed that the sale was in complete accord with the requirements of Section 3 of Act No. 3135*.
Held: The order violates the constitutional requirement. The order did not discuss what the evidence was or why the legal requirements had been observed. (Nicos Industrial Corporation v. CA, 206 SCRA 122)

Facts: The RTC convicted the accused of murder. *The decision contained no findings of fact in regard to the commission of the crime and simply contained the conclusion that the prosecution had sufficiently established the guilt of the accused of the crime charged beyond reasonable doubt and that the witnesses for the protection were more credible.*
Held: The decision did not contain any findings of fact which are essential in decision-making. (People v. Viernes, 262 SCRA 641)

Facts: Petitioners sued respondents for damages on the ground that they were not able to take their flight although the travel agent who sold them the plane tickets confirmed their reservations. *The decision of the trial court summarized the evidence for the parties and then held that respondent, the travel agent, and the sub-agent should be held jointly and severally liable for damages on the basis of the facts.*
Held: The decision did not distinctly and clearly set forth the factual and legal bases for holding respondents jointly and severally liable. (Yee Eng Chong v. Pan American World Airways Inc., 328 SCRA 717)

Facts: The MTC convicted petitioner of unfair competition. Petitioner appealed to the RTC. The RTC affirmed his conviction. The RTC stated in this decision that it found no cogent reason to disturb the findings of fact of MTC.
Held: The decision of the RTC fell short of the constitutional requirement. The decision in question should be struck down as a nullity. (Yao v. CA, 344 SCRA 202)

4. Statement of Legal Basis for Denial of MR or Petition for Review

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. (Section 14)

Resolutions disposing of petitions fall under the constitutional provision (Section 14, 2nd paragraph) which states that "no petition for review…shall be refused due course… without stating the legal basis therefore."

When the Court, after deliberating on a petition and any subsequent pleadings, manifestations, comments, or motion decides to deny due course to the petition and states that the questions raised are factual or no reversible error or if the respondent court's decision is shown or for some other legal basis stated in the resolution, there is sufficient compliance with the constitutional requirement. (Borromeo v. CA)

Illustrative Cases:

The Court of Appeals denied the petitioner's motion for reconsideration in this wise: "Evidently, the motion poses nothing new. The points and arguments raised by the movants have been considered an passed upon in the decision sought to be reconsidered. Thus, we find no reason to disturb the same." The Supreme Court held that there was adequate compliance with the constitutional provision. (Martinez v. CA, 2001)

The Supreme Court ruled that "lack of merit" is sufficient declaration of the legal basis for denial of petition for review or motion for reconsideration. (Prudential Bank v. Castro)

5. Period for Decision

[522] **G.R. No. 166051, April 8, 2008.**
[523] Sin Perjuicio judgment is a judgment without a statement of facts in support of its conclusions.

All cases or matters filed after the effectivity of 1987 Constitution must be decided or resolved within **twenty-four months** from date of submission for the Supreme Court. (Section 15).

Exception: When the Supreme Court review the factual basis of the proclamation of martial law or suspension of the privilege of the writ or the extension thereof, it must promulgate its decision thereon within 30 days from its filing. (Article VII, Section 18).

Mandatory. Decision within the maximum period is mandatory. Failure to comply can subject a Supreme Court Justice to impeachment for culpable violation of the Constitution.[524]

The court, under the 1987 Constitution, is now mandated to decide or resolve the case or matter submitted to it for determination within specified periods. Even when there is delay and no decision or resolution is made within the prescribed period, there is no automatic affirmance of the appealed decision. This is different from the rule under Article X, Section 11(2) of the 1973 Constitution which said that, in case of delay, the decision appealed from was deemed affirmed. (Sesbreño v. CA, 2008) [525]

6. When a Case Deemed Submitted

A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself. (Section 15)

7. Certification of Period's Expiration and Explanation for Failure to Render Decision or Resolution

Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period. (Section 15)

Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Section 15)

B. Cases Decided En Banc

Section 4

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

(1999 Bar Question)

Cases that must be heard en banc:

1. All cases involving the constitutionality of a treaty, international or executive agreement, or law.
2. All cases which under the Rules of Court are required to be heard en banc
3. All cases involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations
4. Cases heard by a division when the required majority in the division is not obtained;
5. Cases where the Supreme Court modifies or reverses a doctrine or principle of law previously laid down either en banc or in division.
6. Administrative cases involving the discipline or dismissal of judges of lower courts (Section 11) [Dismissal of judges, Disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos (*People v. Gacott*)]
7. Election contests for President or Vice-President.
8. Appeals from Sandiganbayan or Constitutional Commissions. (Legal Basis?)

Number of Votes Needed to Decide a Case Heard En Banc:

When the Supreme Court sits en banc cases are decided by the concurrence of "majority if the members who actually took part in the deliberations on the issues in the cases and voted thereon." Thus, since a quorum of the Supreme Court is eight, the votes of at least five are needed and are enough, even if it is a question of constitutionality. (Those who did not take part in the deliberation do not have the right to vote)[526] (1996 Bar Question)

ASM: In reality, when the decision says that a particular Justice "did not take part", it does not necessarily mean that he was not there during the deliberations.

[524] Bernas Commentary, p 997(2003 ed).

[525] G.R. No. 161390, April 16, 2008.

[526] Bernas Primer at 338 (2006 ed.)

Q: How many justices are needed to constitute a quorum when the Court sits en banc and there are only fourteen justices in office?
A: In *People v. Ebio, 2004,* since it was a capital criminal cases, the Court said that there should be eight.[527]

Procedure if opinion is equally divided.
When the Court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.(**Rule 56, Section 7, Rules of Court**)

C. Cases Decided in Division

> **Section 4**
> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

Divisions are not separate and distinct courts. Actions considered in any of the divisions and decisions rendered therein are, in effect by the same Tribunal. Decisions or resolutions of a division of the court are not inferior to an *en banc* decision. (People v. Dy, 2003)

Decisions of a division, not appealable to en banc. Decisions or resolutions of a division of the court, when concurred in by majority of its members who actually took part in the deliberations on the issues in a case and voted thereon is a decision or resolution of the Supreme Court. (Firestone Ceramics v. CA, 2000)

Where the required number cannot be obtained in a division of three in deciding a case. Where the required number of votes is not obtained, there is no decision. The only way to dispose of the case then is to refer it to the Court en banc. (Section 4(3))

"Cases" v. "Matters".
"Cases or **matters** heard by a division shall be ***decided*** or ***resolved*** with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members.**"**
When the required number is not obtained, the **case** shall be decided en banc."

A careful reading of the above constitutional provision reveals the intention of the framers to draw a distinction between cases on one hand and, and matters on the other hand, such that cases are 'decided' while matters, including motions, are 'resolved'. Otherwise put, the word "decided" must refer to 'cases; while the word 'resolved' must refer to 'matters'.

Where the required number cannot be obtained in a division of three in motion for reconsideration. If a case has already been decided by the division and the losing party files a motion for reconsideration, the failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. Quite plainly, if the voting results in a tie, the motion for reconsideration is lost. The assailed decision is not reconsidered and must therefore be deemed affirmed. (Fortich v. Corona, 1999)

VIII. Other Courts

Composition
Judicial Power; Judicial Review
Jurisdiction
Qualifications
Appointment
Salaries
Tenure
Removal
Prohibition
Deciding a Case

A. Composition

The composition of lower courts shall be provided by law. The laws are Judiciary Act of 1948 and BP 129.

The different lower courts under the Judiciary Reorganization Law are the:
1. Court of Appeals
2. regional trial courts
3. metropolitan trial courts
4. municipal trial courts
5. municipal circuit trial courts

Other Courts:
1. Court of Tax Appeals
2. Sandignabayan
3. Sharia Court

(Together with the Supreme Court , the aforementioned tribunals make up the judicial department of our government)[528]

[527] Bernas Primer at 337 (2006 ed.)

[528] Cruz, Philippine Political Law, p. 231 (1995 ed).

Court of Appeals. The Court of Appeals is composed of 68 Associate Justices and 1 Presiding Justice. (RA 52; RA 8246)

B. Judicial Power; Judicial Review in Lower Courts

Judicial power shall be vested in one Supreme Court and **in such lower courts** as may be established by law.
Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Section 1)

Legal Bases of lower courts' power of judicial review:

1. ***Article VIII, Section 1.*** Since the power of judicial review flows from judicial power and since inferior courts are possessed of judicial power, it may be fairly inferred that the power of judicial review is not an exclusive power of the Supreme Court.
2. ***Article VII, Section 5(2).*** This same conclusion may be inferred from Article VIII, Section 5(2), which confers on the Supreme Court ***appellate*** jurisdiction over judgments and decrees of lower courts in certain cases.

Note: While a declaration of unconstitutionality made by the Supreme Court constitutes a precedent binding on all, a similar decision of an inferior court binds only the parties in the case.[529]

C. Jurisdiction of Lower Courts

1 Statutory Conferment of Jurisdiction

The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts. (Section 2)

2. Constitutional Conferment of Jurisdiction

J.M. Tuason & Co. v. CA; Ynot v. IAC: There is in effect a constitutional conferment of original jurisdiction on the lower courts in those five cases for which the Supreme Court is granted appellate jurisdiction in Section 5(2).

Section 5(2). The Supreme Court has the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
c. All cases in which the jurisdiction of any lower court is in issue.
d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
e. All cases in which only an error or question of law is involved.

D. Contempt Powers

(See Rule 71)

The power to punish for contempt is inherent in al courts; its existence is essential to the preservation of order in judicial proceedings and to the enforcement of judgment, orders, and mandates of the courts, and consequently, to the due administration of justice.[530]

1996 Bar Question
On the first day of the trial of a rape-murder case where the victim was a popular TV star, over a hundred of her fans rallied at his entrance of the courthouse, each carrying a placard demanding the conviction of the accused and the imposition of the death penalty on him. The rally was peaceful and did not disturb the proceedings of the case.
Q: Can the trial court order the dispersal of the rallyists under the pain of being punished for contempt of court?
Suggested Answer: Yes, the trial court can order the dispersal of the rally under the pain of being cited for contempt. The purpose of the rally is to attempt to influence the administration of justice. As stated in People v. Flores, 239 SCRA 83, any conduct by any party which tends to directly or indirectly impede or obstruct or degrade the administration of justice is subject to the contempt powers of the court.
Q: If instead of a rally, the fans of the victim wrote letters to the newspaper editors demanding the conviction of the accused, can the trial court punish them for contempt?
Suggested Answer: No, the trial court cannot punish for contempt the fans of the victim who wrote letters to the newspaper editors. Since the letters were not addressed to the judge and the publication of the letters occurred outside the court, the fans cannot be punished in the absence of a clear and present danger to the administration of justice.

E. Qualifications

[529] Bernas Commentary, p 964 (2003 ed).

[530] Slade Perkins v. Director of Prisions, 58 Phil 271.

1. Qualifications of Members of Court of Appeals

1. Must be a natural-born citizen of the Philippines (Section 7(1))
2. Must be a member of the Philippine Bar (Section 7(2))
3. Must be a person of proven competence, integrity, probity, and independence. (Section 7(3))
4. Possessing other qualifications prescribed by Congress (Section 7(2))

Section 7 of BP 129 provides that, *"The Presiding Justice and the Associate Justice shall have the same qualifications as those provided in Constitution for Justice of the Supreme Court"*. Hence, the members of the CA must also be:

a. Must at least be 40 years of age;
b. Must have been for 15 years or more a judge of a lower court or engaged in the practice of law in the Philippines

2. Constitutional Qualifications for Non-collegiate courts

1. Citizens of the Philippines (Section 7(2))
2. Members of the Philippine Bar (Section 7(2))
3. Possessing the other qualifications prescribed by Congress (Section 7(2))
4. Must be a person of proven competence, integrity, probity and independence. (Section 7(3))

Qualifications of RTC Judges:

1. Citizen of the Philippines; (Section 7(2))
2. Member of the Philippine Bar (Section 7(2))
3. A person of proven competence, integrity, probity and independence.
4. Possessing the other qualifications prescribed by Congress (Section 7(2))
   a) At least 35 years old (BP 129, Section 15)
   b) Has been engaged for at least [10] years in the practice of law in the Philippines or has held public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (BP 129, Section 15)

Qualifications of MTC, MeTC, MCTC Judges:

1. Citizen of the Philippines; (Section 7(2))
2. Member of the Philippine Bar (Section 7(2))
3. A person of proven competence, integrity, probity and independence.
4. Possessing the other qualifications prescribed by Congress (Section 7(2))
   a) At least 35 years old (BP 129, Section 26)
   b) Has been engaged for at least 5 years in the practice of law in the Philippines or has held public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (BP 129, Section 26)

Qualifications of CTA Judges:
Judges of the CTA shall gave the same qualifications as Members of the Supreme Court. (RA No. 1125, Section 1 in relation to CA No. 102, Section 1)

Qualifications of Members of Sandiganbayan:
No person shall be appointed as Member of the Sandiganbayan unless he is at least forty years of age and for at least 10 years has been a judge of a court of record or has been engaged in the practice of law in the Philippines or has held office requiring admission to the bar as a prerequisite for a like period. (PD No. 1606 as amended, Section 1)

Qualifications of judges of Shari'a Courts:
In addition to the qualifications for Members of Regional Trial Courts, a judge of the Sharia's district court must be learned in the Islamic Law and Jurisprudence. (PD No. 1083, Article 140)
No person shall be appointed judge of the Shari'a Circuit Court unless he is at least 25 years of age, and has passed an examination in the Shari'a and Islamic jurisprudence to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari'a courts. (PD No. 1083, Article 152)

Note: Congress may not alter the constitutional qualifications of members of the Judiciary. But Congress may alter the statutory qualifications of judges and justices of lower courts.[531]

It behooves every prospective appointee to the Judiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. Thus the fact that a prospective judge failed to disclose that he had been administratively charged and dismissed from the service for grave misconduct by a former President of the Philippines was used against him. It did not matter that he had resigned from office and that the administrative case against him had become moot and academic.[532]

[531] Bernas Primer at 356 (2006 ed.)

[532] *In re JBC v. Judge Quitain,* JBC No. 013, August 22, 2007.

D. Appointment

The judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Section 9)

Two months immediately before the next presidential elections and up to the end of his term, a President or acting President shall not make appointments… (Article VII, Section 15). In *In Re: Mateo Valenzuela, 1998*, it was held that during this period (when appointments are prohibited), the President is not required to make appointments to the courts nor allowed to do so. While the filling up of vacancies in the Judiciary is in the public interest, there is no showing in this case of any compelling reason to justify the making of the appointments during the period of the ban.

E. Salaries

The salary of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased. (Section 10)

Imposition of income tax on salaries of judges does not violate the constitutional prohibition against decrease in salaries.(Nitafan v. Tan, 152 SCRA 284)

F. Tenure

The judges of lower courts shall hold office during good behavior until they reach the age of **seventy years** or become incapacitated to discharge the duties of their office. (Section 11)

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of members. (Section 2)

In *Vargas v. Villaroza,* (80 Phil 297 (1982), the Supreme Court held that the guarantee of security of tenure is a guarantee not just against "actual removal" but also of "uninterrupted continuity in tenure."

G. Discipline/ Removal

The Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

According to *People v. Gacott, (1995),* only dismissal of judges, disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos requires en banc decision.

The grounds for the removal of a judicial officer should be established beyond reasonable doubt, particularly where the charges on which the removal is sought are misconduct in office, willful neglect, corruption and incompetence. (Office of the Judicial Administrator v. Pascual, 1996)

H. Prohibition

The members of courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions. (Section 12)

Thus, where a judge was designated member of the *Ilocos Norte Provincial Committee on Justice* by the Provincial Governor where the function of the Committee was to receive complaints and make recommendations towards the speedy disposition of cases of detainees, the **designation was invalidated**. (*In re* Manzano, 166 SCRA 246 (1988).

I. Deciding a Case

1. Consultation

The conclusions of the [***lower collegiate courts***] in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court.
A certification to this effect signed by the [Chief Justice] shall be issued and a copy thereof attached to the record of the case and served upon the parties.
Any Members who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. (Section 13)

Note: CA sits in divisions when it hears cases; the only time to convenes as one body is to take up matters of administration.

2. Statement of Facts and Law

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. (Section 14)

3. Period in Deciding Case

Court	Period
Supreme Court	**24 months** (Section 15)
Court of Appeals	**12 months** (Section 15)
Sandiganbayan	**3 months** (Re Problem of Delays in

	Sandiganbayan)
All other lower courts	**3 months** (Section 15)

(1) All cases or matters filed after the effectivity of 1987 Constitution must be decided or resolved within, unless reduced by the Supreme Court, **twelve months for all lower collegiate courts**, and **three months for all other lower courts**.
(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Section 15)

RE Problem of Delays in the Sandiganbayan
The provision in Article VIII, Section 15 of the 1987 Constitution which says that cases or matters filed must be decided by "lower collegiate courts" within 12 months, does not apply to the Sandiganbayan. The provision refers to regular courts of lower collegiate level, which is the Court of Appeals.
The Sandiganbayan is a special court on the same level as the Court of Appeals, possessing all inherent powers of a court of justice with the same functions of a trial court. The Sandiganbayan, being a special court, shall have the power to promulgate its own rules. In fact, it promulgated its own rules regarding the reglementary period of undecided cases under its jurisdiction. In its own rules it says that judgments on pending cases shall be rendered within 3 months. Also, the law creating the Sandiganbayan is also clear with the 3 month reglementary period. The Sandiganbayan, in a sense, acts like a trial court, therefore a 3 month and not a 12 month reglementary period.

Article IX
CONSTITUTIONAL COMMISSIONS

I. COMMON PROVISIONS (Article IX-A)
II. CIVIL SERVICE COMMISSION (Article IX-B)
III. COMMISSION ON ELECTIONS (Article IX-C)
IV. COMMISSION ON AUDIT(Article IX-D)

I. Common Provisions

Independent Constitutional Commissions
Safeguards Insuring Independence
Inhibitions on the Members of the Commissions
Rotational Scheme
Reappointment
Proceedings
Enforcement of Decisions

Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Section 2. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Section. 3. The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure.

Section 4. The Constitutional Commissions shall appoint their officials and employees in accordance with law.

Section 5. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Section 6. Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Section 8. Each Commission shall perform such other functions as may be provided by law.

A. Independent Constitutional Commissions

The independent constitutional commissions are the:

1. Civil Service Commission
2. Commission on Elections
3. Commission on Audit

Q: Why have these commissions been made constitutional commissions?
A: The CSC, COA and COMELEC perform key functions in the government. **In order to protect their integrity**, they have been made constitutional bodies.[533]

B. Safeguards Insuring the Independence of the Commissions[534]

1. They are constitutionally created; they may not be abolished by statute. (Art. IX-A, §1)
2. Each is expressly described as "independent." (Art. IX-A, §1)
3. Each is conferred certain powers and functions which cannot be reduced by statute. (Art. IX-B, C and D)
4. The Chairmen and members cannot be removed except by impeachment. (Art. XI, §2)
5. The Chairmen and members are given fairly long term of office of 7 years. (Art. IX-B, C and §1(2))
6. The terms of office of the chairmen and members of all the commissioners are staggered in such a way as to lessen the opportunity for appointment of the majority of the body by the same President. (Art. IX-B, C and §1(2))
7. The chairmen and members may not be reappointed or appointed in an acting capacity.[535] (Art. IX-B, C and §1(2))

[533] Bernas Primer at 367 (2006 ed.)

[534] Cruz, Philippine Political Law, p. 278 (1995 ed).

[535] In Matibag v. Benipayo, the SC said that when an ad interim appointment (of the Chairman of COMELEC) is not confirmed (as it was by-passed, or that there was no ample time for the Commission on Appointments to pass upon the same), another ad interim appointment may be extended to the appointee without violating the Constitution.

8. The salaries of the chairman and members are relatively high and may not be decreased during continuance in office. (Art. IX-A, §3; Art. XVIII, §17)
9. The Commissions enjoy **fiscal autonomy**. (Art. IX-A, §5)
10. Each Commission may promulgate its own procedural rules, provided they do not diminish, increase or modify substantive rights. (Art. IX-A, §4)
11. The chairmen and members are subject to certain disqualifications calculated to strengthen their integrity. (Art. IX-A, §4)
12. The Commissions may appoint their own officials and employees in accordance with Civil Service Law. (Art. IX-A, §4)

Q: There are independent offices specifically authorized by the Constitution to appoint their officials. Does this imply that their appointment will not be subject to Civil Service Law and Rules?
A: No. if this were the case, these independent bodies would arrogate upon themselves a power that properly belongs to the Civil Service Commission. Had the intention of the framers of the Constitution been to isolate and grant full independence to Constitutional Commission in the matter of appointments, it would have been so provided. But that is not the case. And since all matters pertaining to appointments are within the realm of expertise of the CSC, all laws, rules and regulations it issues on appointments must be complied with. (Ombudsman v. CSC, February 16, 2005)

C. Inhibitions/Disqualifications (Section 2)

Members of constitutional commissions:

1. Shall not, ***during tenure***, hold any other office or employment;
2. Shall not engage in the ***practice of any profession***;
3. Shall not engage in the ***active management or control*** of any business which in any way may be affected by the functions of his office.
4. Shall not be ***financially interested***, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporation or their subsidiaries.

Purpose of Disqualifications. To compel the chairmen and members of the Constitutional Commissions to devote their full attention to the discharge of their duties and, as well, to remove from them any temptation to take advantage of their official positions for selfish purposes.[536]

"Practice of profession" for the purpose of Section 3, does not include teaching. Thus, a lawyer who teaches law does not thereby, for the purpose of Section 2, violate the prohibition of practice of a profession. (I RECORD 544-555, 558-559)

Prohibition of "active management" does not prohibit a Commissioner from owning business but it prohibits him from being the managing officer or a member of the governing board of a business, "which in any way may be affected by the functions of his office," a qualifying phrase which does not apply to the prohibition of a practice of a profession. (I RECORD 552-559)

D. Rotational Scheme of Appointments (1999 Bar Q)

(Section 1(2) of Article IX-B, C and D.)

The first appointees shall serve 7, 5 and 3 years respectively.

Reason for Staggering of Terms:

1. To lessen the opportunity of the President to appoint a majority of the body during his term;
2. To ensure continuance of the body, which always retains 2/3 of its membership.
3. The system is expected to stabilize the policies of the body as maintained by the remaining members.[537]

Gaminde v. COA, December 13, 2000. It was held that in order to preserve the periodic succession mandated by the Constitution, the rotational plan requires two conditions:

1. The terms of the first commissioners should start on a common date (**Feb 2, 1987**); and
2. Any vacancy due to death, resignation or disability before the expiration of the term should only be filled for the unexpired balance of the term.

E. Proceedings

1. Decision

There is no decision until the draft is signed and promulgated. Hence, if a commissioner signs a decision but retires before the decision is promulgated, his vote does not count even if it was he who penned the decision. (Ambil v. COMELEC, October 25, 2005)

[536] Cruz, Philippine Political Law, p. 280 (1995 ed).

[537] Cruz, Philippine Political Law, p. 289 (1995 ed).

2. Who makes the decision

The decisions are made by the body and not by individual members. No individual member may make a decision for the Commission. Much less may cases be decided by subordinates of the Commission. Not even the Commission's legal counsel may make a decision fro the Commission.

3. Each Commission shall decide **by a majority vote *of all its Members*** any case or matter brought before it within sixty days from the date of its submission for decision. (Article IX-A Section 7)

The provision is clear that what is required is the majority vote of all the members, not only of those who participated in the deliberations and voted thereon. (Estrella v. COMELEC, May 27, 2004)

(Article IX-B, Section 2 allows the COMELEC to make decisions in divisions) In the COMELEC, there is full Commission to form a banc if there are four Commissioners left.

Q: Two commissioners who participated in the consideration of the case retired before the promulgation of the COMELEC decision but after they cast their vote. Four commissioners were left. Should the votes of the retirees be counted?
A: No. Their vote should be automatically withdrawn. There is no decision until it is promulgated.
Q: Is the 3-1 vote of the remaining commissioners a valid decision en banc.
A: The vote of 3 is a majority vote of all. (Dumayas v. COMELEC, April 20, 2001)

4. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days fro the receipt thereof. (Article IX-A Section 7)

The *certiorari* referred to is a **special civil action for certiorari** under Rule 65. (Dario v. Mison)

The certiorari jurisdiction of the Supreme Court is limited to decision rendered in actions or proceedings taken cognizance of by the Commissions in the exercise of their adjudicatory or quasi-judicial powers.
(It does not refer to purely executive powers such as those which relate to the COMELEC's appointing power. Hence, questions arising from the award of a contract for the construction of voting booths can be brought before a trial court. Similarly, actions taken by the COMELEC as prosecutor come under the jurisdiction of the trial court which has acquired jurisdiction over the criminal case.)

Q: How are decisions of the commissions reviewed by the SC?

Commission on Audit: Judgments or final orders of the Commission on Audit may be brought by an aggrieved party to the Supreme Court on certiorari under Rule 65.
Only when COA acts without or excess in jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the SC entertain a petition for certiorari under Rule 65.

Civil Service Commission: In the case of decisions of the CSC, Administrative Circular 1-95[538] which took effect on June 1, 1995, provides that final resolutions of the CSC shall be appealable by certiorari to the CA within 15 days from receipt of a copy thereof. From the decision of the CA, the party adversely affected thereby shall file a petition for review on certiorari under **Rule 45** of the Rules of Court.

Q: When certiorari to the Supreme Court is chosen, what is required?
A: Rule 65, Section 1 says that certiorari may be resorted to when there is no other plain or speedy and adequate remedy. But reconsideration is a speedy and adequate remedy. Hence, a case may be brought to the Supreme Court only after reconsideration.
(As a consequence, in the case of decisions of the COMELEC, only decision *en banc* may be brought to the Court by certiorari since Article IX-C, 3 says that motions for reconsideration of decisions shall be decided by the Commission en banc. (Reyes v. RTC, 1995)

F. Enforcement of Decisions

The final decisions of the Civil Service Commission are enforceable by a **writ of execution** that the Civil Service Commission may itself issue. (Vital-Gozon v. CA, 212 SCRA 235)

G. Fiscal Autonomy

Article IX-A, Section 5 gives the constitutional commissions fiscal autonomy, that is, their approved annual appropriations shall be automatically and regularly released and shall not be subject to pre-audit.[539]

[538] Pursuant to RA 7902.

[539] Bernas Commentary, p 1003(2003 ed).

Fiscal Autonomy. In ***Civil Service Commission v. DBM, July 22, 2005,*** the SC said that the "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy, without violating Section 5 of Article IX-A of the Constitution. The "automatic release" of approved annual appropriations to petitioner, a constitutional commission vested with fiscal autonomy should thus be construed to mean that no condition to fund releases to it may be imposed.
xxx
However, petitioner's claim that its budget may not be reduced by Congress below the amount appropriated for the previous year, as in the case of the Judiciary, must be rejected. The provisions in Section 3, Article VIII, prohibiting the reduction in the appropriation for the Judiciary below the amount appropriated for the previous year does not appear in Section 5, Article IX-A. The plain implication of this omission is that Congress is not prohibited from reducing the appropriations of Constitutional Commissions below the amount appropriated for them for the previous year.

Note: The Supreme Court said that the Commission on Human Rights, unlike the three constitutional commissions, does not enjoy fiscal autonomy. (CHR Employees Association v. CHR, November 25, 2004).

H. Power to Promulgate Rules of Procedure

Article IX-A, Section 6 gives the constitutional commissions authority, sitting en, to promulgate rules of procedure.

Q: In case of conflict between a rule of procedure promulgated by a Commission and a Rule of Court, which prevails?
A: In case of conflict between a rule of procedure promulgated by a Commission and a Rule of Court, the rule of the Commission should prevail if the proceeding is before the Commission; but if the proceeding is before a court, the Rules of Court prevail. (Aruelo Jr. v. CA, October 20, 1993)

Q: May the Supreme Court disapprove internal rules promulgated by the Commissions?
A: The Supreme Court has no power to disapprove Commission rules except through the exercise of the power of "judicial review" when such Commission rules violate the Constitution.[540]

Q: May Congress assume power to review rules promulgated by the Commission?
A: No. (By vesting itself with the powers to approve, review, amend, and revise the Implementing Rules for the Overseas Absentee Voting Act of 2003, Congress acted beyond the scope of its constitutional authority. Congress trampled upon the constitutional mandate of independence of the COMELEC.) (Macalintal v. COMELEC, July 10, 2003)

If the rules promulgated by a Commission are inconsistent with a statute, the statute prevails. (Antonio v. COMELEC, September 22, 1999)

II. Civil Service Commission

Composition of CSC
Functions/ Objective of CSC
Nature of the Powers of CSC
Qualifications of CSC Commissioners
Appointment of CSC Commissioners
Scope of Civil Service
Classification of Positions
Classes of Service
Disqualifications
Security of Tenure
Partisan Political Activity
Right to Self-organization
Protection to Temporary Employees
Standardization of Compensation
Double Compensation

Section 1. (1) The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.
(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.
(2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.
(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

[540] Bernas Commentary, p 1003(2003 ed).

(4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign.
(5) The right to self-organization shall not be denied to government employees.
(6) Temporary employees of the Government shall be given such protection as may be provided by law.

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

Section 4. All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

Section 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions.

Section 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any Government-owned or controlled corporations or in any of their subsidiaries.

Section 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.
Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including Government-owned or controlled corporations or their subsidiaries.

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.
Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

A. Composition of CSC

Civil Service Commission is composed of a Chairman and two Commissioners. (Article IX-B, Section 1(1))

B. Functions of CSC

1. The CSC shall administer the civil service. (Art. IX-B, §1(1))
2. The CSC as the **personnel agency of the government** shall establish a career service;
3. It shall adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.
4. It shall strengthen the merit and rewards system;
5. It shall integrate all human resources development programs for all levels and ranks;
6. It shall institutionalize a management climate conducive to public accountability.
7. It shall submit to the President and the Congress an annual report on its personnel programs. (Article IX-B, Section 3)

Power to Grant Civil Service Eligibility. In the exercise of its powers to implement RA 6850 (granting civil service eligibility toe employees under provisional or temporary status who have rendered seven years of efficient service), the CSC enjoys wide latitude of discretion and may not be compelled by mandamus to issue eligibility. (Torregoza v. CSC) But the CSC cannot validly abolish the Career Executive Service Board (CESB); because the CESB was created by law, it can only be abolished by the Legislature (Eugenio v. CSC, 1995)

Power to hear and decide administrative cases. Under the Administrative Code of 1987, the CSC has the power to hear and decide administrative cases instituted before it directly or on appeal, including contested appointments.[541]

Jurisdiction on Personnel actions. It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure, that decisions of lower officials (in cases involving personnel actions) be appealed to the agency head, then to the CSC. The RTC does not have jurisdiction over such personal actions. (Olanda v. Bugayong, 2003)

Authority to Recall Appointments. The Omnibus Rules implementing the Administrative Code provides, among others, that notwithstanding the initial approval of an appointment, the same may be recalled for violation of other existing Civil service laws, rules and regulations. Thus, in *Debulgado v. CSC,* it was held that the power of the CSC includes the authority to recall appointment initially approved in disregard of

[541] Antonio B. Nachura, Outline/Reviewer in Political Law, 307 (2006)

applicable provisions of the Civil Service law and regulations.[542]

Original jurisdiction to hear and decide a complaint for cheating. The Commission has original jurisdiction and decide a complaint for cheating in the Civil Service examinations committed by government employees. The fact that the complaint was filed by the CSC itself does not mean that it cannot be an impartial judge. (Cruz v. CSC. 2001)[543]

Q: When there are more than one person qualified for a position, may the CSC dictate to the appointing authority who among those qualified should be appointed?
A: No. the power of the CSC is limited to attesting to the eligibility or ineligibility of the appointee. (Orbos v. CSC, 1990)[544]

Q: May the CSC revoke a certificate of eligibility?
A: Yes. As central personnel agency of the government, the CSC may revoke a certificate of eligibility *motu propio*. The power to issue a certificate of eligibility carries with it the power to revoke one that has been given. Whether hearing is required for revocation depends on circumstances of a case.
(Thus, where the case "simply involves the rechecking of examination papers and nothing more than a re-evaluation of documents already in the records of the CSC according to a standard answer key previously set by it, notice and hearing is not required. Instead, what [would apply in such a case is] the rule of *res ipsa loquitor."* (Lazo v. CSC, 1994)

Q: What jurisdiction does the CSC have over the personnel cases given by statute to the jurisdiction of the Merit Systems Board?
A: It has only automatic review jurisdiction, not original jurisdiction. (GSIS v. CSC, 1991)

C. Nature of the Powers of CSC

The Commission is an administrative agency, nothing more. As such, it can only perform powers proper to an administrative agency. It can perform executive powers, quasi-judicial powers and quasi-legislative or rule-making powers.[545]

D. Qualifications of CSC Commissioners

1. Natural-born citizens of the Philippines;
2. At the time of their appointment, at least thirty-five years of age;
3. With proven capacity for public administration;
4. Must not have been candidates for any elective position in the elections immediately preceding their appointment. (Article IX-B, Section 1(1))

E. Appointment of CSC Commissioners

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment.

Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment.

Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Article IX-B, Section 1(2))

Reason for Staggering of Terms:
1. To lessen the opportunity of the President to appoint a majority of the body during his term;
2. To ensure continuance of the body, which always retains 2/3 of its membership.
3. The system is expected to stabilize the policies of the body as maintained by the remaining members.[546]

F. Scope of Civil Service System

The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations ***with original charters***. (Article IX-B, Section 2(1))

Test for determining whether a government owned or controlled corporation is subject to the Civil Service Law: The test is the manner of its creation. Corporations created by special charter are subject to the Civil Service, whereas corporations incorporated under the Corporation Law are not. (PNOC v. Leogardo, 1989)

Corporations with original charters. They are those created by special law, like GSIS, SSS, Local Water Districts and PAGCOR. (Corporations which are subsidiaries of these chartered agencies like

[542] Antonio B. Nachura, Outline/Reviewer in Political Law, 307 (2006)
[543] Antonio B. Nachura, Outline/Reviewer in Political Law, 307 (2006)
[544] Bernas Primer at 386 (2006 ed.)
[545] Bernas Primer at 372 (2006 ed.)
[546] Cruz, Philippine Political Law, p. 289 (1995 ed).

the Manila Hotel and PAL, are not within the coverage of the Civil Service.[547]

Note: The moment, that a corporation ceases to be government controlled, for instance, if it is privatized, it ceases to fall under the Civil Service.[548]

Q: Does the Department of Labor have a role over civil service members?
A: Yes. Entities under the civil service system are not completely beyond the reach of Department of Labor or labor laws.
(When a government entity that is under the Civil Service enters into a contract, e.g., with a security agency or janitorial agency, it becomes an indirect employer of the security guards or the janitors. In such a situation, under the Labor Code, the liabilities for wages are joint and solidary with the contractor. The law on wages on in the Labor Code specifically provides that "employer" includes any person acting directly or indirectly in the interest of an employer in relation to employees. (Philippine Fisheries Development Authority v. NLRC & Odin Security Agency, 1992)

G. Classification of Positions (*under Section 2(2) for purpose of determining the manner of testing merit and fitness)*

1. **Competitive Positions**
2. **Non-competitive Positions**

Competitive Positions

As a general rule, positions in all branches of government belong to the competitive service. (Samson v. CA)

Facts: Petitioner, the Mayor of Caloocan City, terminated the services of respondent, the Assistant Secretary to the Mayor, on the ground of loss of confidence. Respondent protested on the ground that his position belonged to the classified service. Petitioner argued that under the Civil Service Law, the secretaries of city mayors occupied primarily confidential position and respondent was a secretary to the mayor.
Held: The termination of respondent is void. ***The position of Assistant Secretary to the Mayor should be considered as belonging to the competitive service.*** The position of Secretary of the Mayor and Assistant Secretary are two distinct positions. The latter is of a lower rank and is not primarily confidential. An assistant secretary merely helps in a subordinate capacity the person clothed with the duties of a secretary. (Samson v. CA, 145 SCRA 654)[549]

Facts: Respondent was appointed as member of **internal security staff of the PAGCOR.** He was terminated allegedly for loss of confidence, because he allegedly engaged in proxy betting. When respondent sued for reinstatement, the PAGCOR argued that under PD 1869, all its employees are classified as confidential.
Held: The classification in PD 1869 can be no more than an initial determination and is not conclusive. It is the nature of the position which finally determines whether a position is primarily confidential. Respondent did not enjoy close intimacy with the appointing authority which would make him a confidential employee. As member of the internal staff, he was tasked with preventing irregularities among the employees and customers, reporting unusual incidents and infractions, coordinating with security department during chips inventory, refills, yields and card shuffling, and escorting the delivery of table capital boxes, refills and shoe boxes. (CSC v. Salas, 274 SCRA 414)[550]

Classes of Non-Competitive Positions

1. Policy Determining
2. Primarily Confidential
3. Highly Technical

Policy-Determining Position
One charged with laying down of principal or fundamental guidelines or rules, such as that of a head of a department.[551]

Primarily Confidential Position
One denoting not only confidence in the aptitude of the appointee for the duties of the office but **primarily** close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings or betrayals of personal trust on confidential matters of state (De los Santos v. Mallare, 87 Phil 289).

Proximity Rule: The occupant of a particular position can be considered a confidential employee if the ***predominant reason*** why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion without fear of embarrassment or misgivings of possible betrayals of personal trust and confidential matters of stare. Delos Santos v. Mallare)(Where the position occupied is remote from that of the appointing authority, the element of trust between them is no longer predominant, and therefore, cannot be classified as primarily confidential)

The following are held to be primarily confidential:
1. Chief legal counsel of PNB. (Besa v. PNB)
2. City legal officer (Cadiente v. Santos)
3. Provincial attorney(Grino v. CSC) (*However, positions of the legal staff are not confidential)*

[547] Cruz, Philippine Political Law, p.290 (1995 ed).

[548] Bernas Primer at 374 (2006 ed.)

[549] Jacinto Jimenez, Political Law Compendium, 365 (2006 ed.)

[550] Jacinto Jimenez, Political Law Compendium, 367 (2006 ed.)

[551] Cruz, Philippine Political Law, p.293 (1995 ed).

4. Security guards of a vice-mayor (Borres v. CA)

> **Facts:** Upon recommendation of the vice-mayor, the mayor appointed respondents as **security guards of the vice mayor**. The mayor and vice mayor lost in the election. As the new mayor, petitioner terminated the services of respondents for lack of confidence. Respondents sued for reinstatement on the ground that their removal was illegal.
> **Held: The positions of respondents [security guards of the vice mayor] are primarily confidential**, as they involve giving protection to the vice mayor. The relationship between the vice mayor and his security depend on the highest of trust and confidence. Hence, the tenure of respondents ended upon loss of confidence in them. (Borres v. CA, 153 SCRA 120)[552]

Highly Technical Position
A highly technical position requires the appointee thereto to possess technical skill or training in the supreme or superior degree.

> The position of a city engineer may be technical but not highly so because he is not required or supposed to posses a supreme or superior degree of technical skill. The duties of a city engineer are eminently administrative in character and can be discharged even by non-technical men. (Delos Santos v. Mallare)

In *Montecillo v. CSC, 2001*, the SC said that under Administrative Code of 1987, the CSC is expressly empowered to declare positions in the CSC as primarily confidential. This signifies that the enumeration in the Civil Service decree, which defines the non-career service, is not an exclusive list. The Commission can supplement this enumeration, as it did when it issued Memorandum Circular 22, s. 1991, specifying positions in the Civil Service which are considered primarily confidential and, therefore, their occupants hold tenure co-terminous with the officials they serve.[553]

Q: Who determines whether a position is policy-determining, primarily confidential or highly technical?
A: It is a judicial question. It is the **nature** of the position *which finally determines* whether a position is primarily confidential, policy-determining or highly technical. The initial classification may be made by the authority creating the office. Executive pronouncements as to the nature of the office can be no more than initial determination of the nature of the office.[554]

[*The competitive and non-competitive positions roughly correspond to the classification in the Civil Service Code now embodied in the Revised Administrative Code of 1987: (1) Career Service and (2) Non-Career Service.*][555]

H. Classes of Service (*under the Revised Administrative Code)*

1. Career Service
2. Non-Career Service

1. Career Service (1999 Bar Question)

The career service is characterized by:
1. Entrance based on the merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications;
2. Opportunity for advancement to higher career positions;
3. Security of Tenure.[556]

The career service includes:
1. **Open Career positions** for appointment to which prior qualification in an appropriate examination is required.
2. **Closed Career positions** which are scientific or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
3. **Positions in the Career Executive Service**, namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Chief Executive Service Board, all of whom are appointed by the President;
4. **Career officers**, other that those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the DFA.
5. **Commissioned officers and enlisted men of the Armed Forces**, which shall maintain a separate merit system;
6. **Personnel of government-owned or controlled corporations**, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
7. **Permanent laborers,** whether skilled, semi-skilled, or unskilled.[557]

[552] Jacinto Jimenez, Political Law Compendium, 366 (2006 ed.)

[553] Antonio B. Nachura, Outline/Reviewer in Political Law, 311 (2006)

[554] *See* Bernas Commentary, p 1016(2003 ed); *See also* Antonio B. Nachura, Outline/Reviewer in Political Law, 311 (2006)

[555] Bernas Commentary, p 1017(2003 ed).

[556] Cruz, Philippine Political Law, p.290 (1995 ed).

[557] Cruz, Philippine Political Law, p.290 (1995 ed).

Career Service Executives (CES). On May 31, 1994, the CSC issued Memorandum Circular No. 21 identifying the positions covered by the CES. The Memorandum provides that, "incumbents of positions which are declared to be CES positions for the first time pursuant to this Resolution who hold permanent appointments thereto shall remain under permanent status in their respective positions. However, upon promotion or transfer to other CES positions, these incumbents shall be under temporary status in said other CES positions until they qualify."[558]

CES and Security of Tenure. The mere fact that a position belongs to the CES does not automatically confer security of tenure on the applicant. Such right will have to depend on the nature of his appointment which, in turn, depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it only in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated. Such being the case, he could transferred or reassigned without violating the constitutional guarantee of security of tenure. (De Leon v. CA, 2001)

Requisites for Security of Tenure of CES employee:
1. Career Service Eligibility
2. Appointment to the appropriate career executive service rank.

> It must be stressed that the security of tenure of employees in the CES (except 1st and 2nd level employees in the civil service) pertains only to rank and not to the office or to the position to which they may be appointed. (Thus, a CES officer may be transferred or reassigned form one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a CES officer suffers no diminution in salary even if assigned to a CES position with lower salary grade, as he is compensated according to his CES rank and not on the basis of the position or office which he occupies. (General v. Roco, 2001)

2. Non-Career Service

The non-career service is characterized by:
1. Entrance on bases other than of the usual tests of merit and fitness utilized for the career service;
2. Tenure which is limited to a period specified by law, or which is co-terminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.[559]

The non-career service includes:
1. Elective officials and their personal or confidential staff;
2. Department heads and other officials of Cabinet rank who hold positions at the pleasure of the President and their personal or confidential staff;
3. Chairmen and members of commissions and boards with fixed terms of office and their personal or confidential staff;
4. Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and perform or accomplish the specific work or job, under their own responsibility with a minimum of direction and supervision from the hiring agency; and
5. Emergency and seasonal personnel.[560]

Q: Is the classification in the Revised Administrative Code (*Career and Non-Career*) and the classification in Section 2(2) (*Competitive and Non-competitive*) mutually exclusive?
A: No. Rather, they overlap and complement each other. The classification in the Code is for the purposes of determining tenure. The classification in Section 2(2) is for purposes of determining the manner of testing merit and fitness.

I. Significance of Distinction between competitive and non-competitive positions

Appointment to a competitive positions must be made according to merit and fitness ***as determined, as far as practicable, by competitive examination.*** Merit and fitness in appointments to non-competitive positions are not determined by competitive examinations; but merit and fitness are required.[561]

J. Appointments in the Civil Service

Appointments in the civil service shall be made only **according to merit and fitness** to be determined, as far as practicable, **by competitive examination**. (Article IX-B, Section 2(2))

Except: To positions which are policy-determining, primarily confidential, or highly technical.

[558] Antonio B. Nachura, Outline/Reviewer in Political Law, 307 (2006)

[559] Cruz, Philippine Political Law, p.291 (1995 ed).

[560] Cruz, Philippine Political Law, p.292 (1995 ed).

[561] Bernas Primer at 375 (2006 ed.)

1. Permanent Appointments

A permanent appointment shall be issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provision of laws, rules and standards promulgated in pursuance thereof. (Administrative Code of 1987, Book V-A, Sec. 27)

2. Temporary Appointments

In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirement for the position to which he is being appointed except the appropriate civil service eligibility.

> Temporary appointments do not have a definite term and may be withdrawn or discontinued, with or without cause, by the appointing power.[562] The new Constitution now says: "Temporary employees of the Government shall be given such protection as may be provided by law." (The provision is not self-executory)
>
> **Q:** A permanent appointment is extended. The Civil Service Commission approves it as temporary in the belief that somebody else is better qualified. May the Commission do so?
> **A:** No. The sole function of the Commission is to attest to the qualification of the appointee. (Luego v. CSC, 1986)

Discretion of Appointing Authority

The appointing authority has **discretion** who to appoint even in the career service of the Civil Service, where the appointee possesses the minimum qualification requirements prescribed by law for the position. (Luego v. CSC, 143 SCRA 327)

> Thus, even if officers and employees in the career service of the Civil Service enjoy the right to preference in promotion, it is not mandatory that the vacancy be filled by promotion. The appointing authority should be allowed the choice of men of his confidence, provided they are qualified and eligible. (Central Bank v. CSC 171 SCRA 744)

The discretion of the appointing authority is not only in the choice of the person who is to be appointed, but also in ***the nature or character of the appointment issued***, i.e., whether the appointment is permanent or temporary. (*The CSC may, however, approve as merely temporary an appointment intended to be permanent where the appointee does not possess the requisite eligibility and the exigency of the service demands that the position be filled up, even in a temporary capacity*.)

Role of CSC (1994 Bar Question)

"All the Commission is authorized to do is to check that the appointee possesses the qualifications and appropriate eligibility. If he does, his appointment is approved; if not, it is disapproved." (Lopez v. CSC)

The CSC is not a co-manager, or surrogate administrator of government offices and agencies. Its functions and authority are limited to approving or reviewing appointments to determine their compliance with requirements of the Civil Service Law. On its own the Commission does not have the power to terminate employment or to drop members from the rolls. (Torres v. CSC, 2001)

Substantive Requirement. A substantive requirement under Section 11 of the Omnibus Service Rules and Regulations is that an appointment should be submitted to the CSC within 30 days from issuance; otherwise it shall be ineffective. (*See* OMNC v. Macaraig, 2004)

Legal Standing. Both the appointing authority and the appointee are the real party interest, and both have legal standing, in a suit assailing a CSC order disapproving an appointment. (Abella Jr. v. CSC)

K. Disqualifications

1. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any Government-owned or controlled corporations or in any of their subsidiaries. (§6)
2. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. (§7)
3. Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including Government-owned or controlled corporations or their subsidiaries. (§7)

Q: What is the purpose of the prohibition of appointment of "lame ducks" in Section 6?
A: The extirpation of the "spoils system."

Q: Are there exceptions to the rule against appointment of elective officials?
A: Yes. The Vice-President may be appointed member of the Cabinet. A member of Congress is designated to sit in the Judicial and Bar Council.[563]

Q: Is the rule on appointive officials (§7) applicable to members of Cabinet?

[562] Cruz, Philippine Political Law, p.293 (1995 ed).

[563] Bernas Primer at 387 (2006 ed.)

A: No. For them, the applicable rule is the stricter prohibition in Article VII, Section 13.[564]

Q: Distinguish the rule on appointments of members of Congress and rule on elective officials (other than Congressmen).
A: The *1st paragraph of Section 7* governs elective officials. Unlike the provision for members of Congress in Article VI Section 13, which does not prohibit acceptance of an appointment but merely causes the forfeiture of the congressional seat if the holder accepts an appointment, **1st paragraph of Section 7 *prohibits elective officials other than members of Congress from accepting appointment during their tenure***. If the elective official accepts an appointment without first resigning his elective position, the appointment is invalid. Neither, however, does he thereby forfeit his elective seat. (Flores v. Drilon, 1993)

Q: May Congress by law authorize the appointment of elective officials?
A: No. Unlike the case of appointive officers in 2nd paragraph of Section 7, Congress may not create exception on elective officials mentioned in 1st paragraph of Section 7.

L. Security of Tenure (1993, 1999, 2005 Bar Question)

> No officer or employee of the civil service shall be removed or suspended except for cause provided by law. (§2(3))

1. Significance of Security of Tenure

The efficiency of the a civil service system depends largely on the morale of the officers and employees in the service. Morale, in turn, can be fatally undermined when the security of officers in the possession of their office is unprotected against the arbitrary action of superior officers.
Hence, basic in any civil service is a guarantee of security of tenure, a guarantee against arbitrary impairment, whether total or partial of the right to continue in the position held.[565]

2. "For Cause Provided by Law"

This is a guarantee of both procedural and substantive due process. **"For Cause"** means for reasons which the law and sound public policy recognize as sufficient for removal, that is legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. Moreover, the cause must relate to and effect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. (De los Santos v. Mallare)

3. Coverage of Security of Tenure

No officer or employee of the civil service shall be removed or suspended except for cause provided by law. (§2(3))

Security of Tenure is enjoyed only by those who posses a **permanent appointment**.[566]

- One does not become a permanent appointee unless qualified for the position, and this, even if the appointment extended is mistakenly designated as permanent.
- The appointment of one who is not qualified can only be temporary and it is understood from the outset that it is without fixity but enduring only at the pleasure of the appointing authority.
- For an appointment to be permanent, it must be a ***real appointment*** by the appointing authority and not just a designation by one who does not have the appointing authority. (Thus, where the law says that the officer is to be appointed by the President, designation by the department secretary does not result in a permanent appointment. (Binamira v. Garucho))
- Even one who has an appointment to a position which is subsequently converted to a career position must yield the position to one who has it if he or she ***does not possess career eligibility***.(Dimayuga v. Benedicto II)
- A person ***lacking the necessary qualifications*** who is given a temporary appointment does not automatically become a permanent appointee when he or she acquires the required qualification. (For a temporary appointee to become permanent, he must receive a new commission, that is, a permanent appointment if he is to be considered permanent.)

Persons occupying non-competitive positions are also covered by the guarantee of security of tenure. The distinction between competitive and non-competitive is significant only for purposes of appointment. The termination of the official relation of officials and employees holding primarily confidential positions on the ground of *loss of confidence* can be justified because in that case their cessation from office involves no removal but *expiration* of the term of office. (Hernandez v. Villegas, 14 SCRA 544, 1965)[567]

Facts: Petitioner a watchman in the office of the provincial treasurer, was dismissed for the convenience of the province. He has no civil service eligibility. He sued for reinstatement.
Held: Although petitioner is not a civil service eligible, this is not a ground to dismiss him anytime without formal charge. The position of watchman falls under the unclassified service. **Positions in the unclassified service are also guaranteed security of tenure**. (Baquidra v. CFI, 80 SCRA 123)[568]

Q: Do appointees to the foreign service who do not belong to the Career Corps enjoy security of tenure like the Career Corp.?
A: No. Political appointees in the foreign service possess "tenure coterminous with that of the appointing authority

[564] Bernas Primer at 388 (2006 ed.)
[565] Bernas Primer at 378 (2006 ed.)
[566] Bernas Commentary, p 1025(2003 ed).
[567] Bernas Primer at 379 (2006 ed.)
[568] Jacinto Jimenez, Political Law Compendium, 370 (2006 ed.)

or subject to his pleasure." (Astraquillo et al v. Manglapus, 1990)

Q: Binamira was "designated" by the Secretary of Tourism as Manager of the Tourism Authority. The law, however, requires that the Manager be appointed by the President. Did Binamira acquire security of tenure?
A: No, because he did no receive a valid appointment. (Binamira v. garucho, 1990)

Q: Can one who does not have qualifications for a position acquire security of tenure therein?
A: No, security of tenure in an office is acquired only by one who has the qualifications for that office. (Dimayuga v. Benedicto , 2002)

Q: Are temporary appointees protected by the guarantee of security of tenure?
A: No. they may be removed anytime. (Mendiola v. Tancinco, 1973) The new Constitution now says: "Temporary employees of the Government shall be given such protection as may be provided by law." (The provision is not self-executory)

Q: What is the extent of the President's disciplinary authority over presidential appointees who belong to the career service?
A: The power is limited. Career service officers and employees who enjoy security of tenure may be removed only for any of the causes enumerated by law. (Larin .v. Executive Secretary, 280 SCRA 713)

4. Transfers

Permanent Transfer. The transfer of a permanent employee to another permanent position without the consent of the employee violates security of tenure. (Gloria. CA, 2000)

Temporary Transfer. While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service. (Gloria v. CA, 2000)

5. Abolition of Office

While abolition of office does not imply removal of the incumbent officer, this is true only where the abolition of office is done in good faith and not merely as a cover for a removal otherwise not allowed by the Constitution. (Briones v. Osmena, 1958)

Thus, for abolition of office to escape the taint of unconstitutionality, it must be made:
1. In good faith;
2. Not for personal or political reasons; and
3. Not in violation of the law. (Roque v. Ericta)

Note: Abolition of office, even if arising from reorganization mandated by law must be justified by good faith and public need. (Abrogar v. Garrucho, 1991) Moreover, abolition of an office created by law can only be done also by law. (Eugenio v. CSC, 1995)

6. Reorganization (1988 Bar Question)

Abolition by law as a result of reorganization is a recognized cause for termination of a government employee.

Q: Does the President have the authority to reorganize the executive department?
A: Yes. And this can include deactivation of offices. As far as bureaus, agencies or offices in the executive department are concerned, the President's power of control may justify him to inactivate the functions of a particular office, or certain laws may grant him the broad authority to carry out reorganization measures. (Buklod ng Kawaning EIIB v. Executive Secretary, 2001)[569]

7. Declaration of Office Vacant

Q: Section 35 of RA 6715 declared all positions of the Commissioners, Executive Labor Arbiters and Labor Arbiters of the present NLRC vacant. Petitioners question its constitutionality.
A: ***Unconstitutional.*** While abolition by law as a result of reorganization is a recognized cause for termination of a government employee, it is not the same as a declaration that the office is vacant. RA 6715 has effected no express abolition of the positions, neither an implied abolition (i.e., an irreconcilable inconsistency between the nature, duties and functions of the petitioner's offices under the old rules and those of the new law) (Mayor v. Hon. Macaraig, 1991)

8. Preventive Suspension

Pending administrative investigation, it is provided that the employee charged shall be subject to preventive suspension but the same shall be lifted after ninety days if he is not a presidential appointee unless the delay in the conduct of the probe is imputable to him. (Book V(A), Sec. 46)

9. Back Wages

When an employee is illegally dismissed, and his reinstatement is later ordered by the Court, for all intents and purposes he is considered as not having left his office, and notwithstanding the silence of the decision, he is entitled to payment of back salaries. (Del Castillo v. CSC, 1997)

But where the reinstatement is ordered by the court not as the result of exoneration but merely as an act of liberality of the Court of Appeals, the claim for backwages for the period during which the employee was not allowed to work must be denied. The general rule is that a public official is not entitled to compensation if he has not rendered any service. (Balitaosan v. DECS, 2003)

[569] Bernas Primer at 383 (2006 ed.)

The payment of backwages during the period of suspension of a civil servant who is subsequently reinstated is proper only if *he is found innocent of the charges* and the *suspension is unjustified.* (*See* Brugada v. Sec. of Education, 2005)

M. Partisan Political Activity

1. Coverage

No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign.(§2(4))

The military establishment is covered by this provision. Article XVI, Section 5(3) provides that no member of the military shall engage directly or indirectly in any partisan political activity except to vote. But this prohibition applies only to those in the active military service, not to reservists. (Cailles v. Bonifacio, 65 Phil 328)

Exceptions:

1. Particularly exempted from the prohibition against partisan political activity are **members of the Cabinet**.[570]
2. Public officers and employees holding political offices (who are allowed to take part in political and electoral activities, except to solicit contributions from their subordinates or commit acts prohibited under the Election Code) (Section 45 of Civil Service Law)[571]

2. Purpose of the Prohibition Against Partisan Political Activity

1. To prevent the members of the civil service from using the resources of the government for the benefit of their candidates;
2. To insulate them from political retaliation from winning candidates they have opposed or not supported.[572]

3. Meaning of Partisan Political Activity

As interpreted by the Civil Service Commission, partisan political activity means ***active support for or affiliation with the cause of a political party or candidate***. This would include, among others, being a candidate for any elective office or delegate to any political convention, being an officer or member of any political committee, party or organization, delivering speeches, canvassing or ***soliciting votes*** or political support or contributions for any political party or candidate or, in general, becoming actively identified with the success or failure of any candidate or candidates for election to public office.[573]

4 Admin Code of 1987

"No officer or employee in the Civil Service, including members of the AFP, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body.
Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibition in the Election Code." (Book V(A), Sec. 56)

N. Right to Self-Organization

The right to self-organization shall not be denied to government employees. (§2(5))

> Thus, the Congress may provide, for example, that temporary employees who acquire civil service eligibility for the positions occupied by them shall be automatically considered permanent appointees thereto, or that temporary employees may not be replaced during a fixed period except for cause, or shall be entitled to the same material benefits, such as leave privileges, during incumbency.[574]

Q: May members of the Civil Service unionize?
A: Yes.

1. Article III, Section 8 guarantees the right of all "including those employed in the public and private sectors, to form unions…"
2. Article IX-B, Section 2(5) states that "the right to self-organization shall not be denied to government employees."
3. Article XIII, Section 3 guarantees "the right of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law."

Their right to strike, however, may be limited by law.[575]

Right to Strike

[570] Cruz, Philippine Political Law, p.297 (1995 ed).
[571] Antonio B. Nachura, Outline/Reviewer in Political Law, 320 (2006)
[572] Cruz, Philippine Political Law, p.298 (1995 ed; Santos v. Yatco, 106 Phil 745)
[573] Section 14, Rule XVIII, Civil Service Rules.
[574] Cruz, Philippine Political Law, p.300 (1995 ed).
[575] Bernas Primer at 385 (2006 ed.)

Right to organize does not include the right to strike. Hence, the Court ruled that employees of SSS and public school teachers do not have a constitutional right to strike. This does not mean, however, that they may not be given the right to strike by statute.[576]

O. Protection to Temporary Employees

Temporary employees of the Government shall be given such protection as may be provided by law. (§2(6))

P. Standardization of Compensation

The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions. (Art. IX-B, §5)

Q. Double Compensation/ Additional Compensation

No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, ***unless specifically authorized by law***, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation. (Art. IX-B, §8)

1. Reason for Prohibition

1. To inform the people of the exact amount a public functionary is receiving from the government so they can demand commensurate services;
2. To prevent the public functionary from dividing his time among several positions concurrently held by him and ineptly performing his duties in al of them because he cannot devote to each the proper attention it deserves.

2. What is Prohibited

The prohibition of the Constitution was against double compensation or additional compensation, not double appointments. Hence, a second position may be held concurrently with the principal position as long as the two are not incompatible, but the incumbent cannot collect additional salaries for services rendered unless specifically allowed by law. (Quimson v. Ozaeta)

Additional Compensation. There is additional compensation when for one and the same office for which a compensation has been fixed there is added to such fixed compensation an extra reward in the form, for instance, of a bonus. This is not allowed in the absence of law specifically authorizing such extra reward. (Thus, where an officer's pay as provided by law was a fixed *per diem*, the SC disallowed additional compensation in the form of cost of living allowances as well as incentive and Christmas bonuses. However, the Court was careful to point out that when a *per diem* or an allowance is given as *reimbursement* for expenses incident to the discharge of an officer's duties, it is not an additional compensation prohibited by the Constitution. (Peralta v. Mathay, 1967))

Double Compensation. Refers to two sets of compensation for two different offices held concurrently by one officer. In the instances when holding a second office is allowed, when an officer accepts a second office, he can draw the salary attached to the second office only when he is specifically authorized by law to receive double compensation.[577]

3. Meaning of "Specifically Authorized By Law"

Strict Interpretation: ***"***The authority required by the Constitution to receive double or additional compensation is a specific authority given to a particular employee or officer of the government because of peculiar or exceptional reasons warranting the payment of extra or additional compensation." (Sadueste v. Surigao, 1941)

(The above interpretation seems to be too strict. It seems in effect to require a special law for every instance of additional or double compensation. An obiter dictum in the later case of Quimson v. Ozaeta, 1956, approves of a more liberal and perhaps administratively more rational approach.)[578]

Liberal Interpretation: "According to law, under certain circumstances, the President may authorize double compensation in some cases, such as government officials acting as members with compensation in government examining board…, or department secretaries acting as members of Board of Directors of government corporations, and in such cases the prohibition against double compensation is not observed. If the President approves the double compensation, well and good. The appointee whose appointment may then be regarded as valid from the beginning could receive extra compensation. If it is disapproved, then the appointment will have to be withdrawn or cancelled, unless of course, the appointee was

[576] Bernas Commentary, p 1027(2003 ed).

[577] Bernas Primer at 389 (2006 ed.)

[578] Bernas Primer at 389 (2006 ed.)

willing to serve without compensation, in which case there would be no valid objection. (Quimson v. Ozaeta, 98 Phil 705, 709-710))

> When a law says that money generated by a school may be used for "other programs/projects of the university or college," such a law is not authorization for giving additional or double compensation.[579]

Q: Upon optional retirement from the judiciary on April 1, 1992, Santos was fully paid of his retirement gratuity under RA 910, as amended. For five years thereafter he has been receiving a monthly pension. Thereafter he was appointed Director III of the defunct MMA.
(1) Can he continue to receive his pension while receiving salary as director?
A: Yes. The second paragraph of Section 8 means that a retiree receiving pension of gratuity can continue to receive such pension or gratuity even if he accepts another government position to which another compensation is attached.
(2) Upon separation from MMA, can his separation pay under RA 7294 include years of service in judiciary?
A: No. That would be double compensation for the same service in the judiciary for which he has already been paid. Section 11 of RA 7924 does not specifically authorize payment of additional compensation for years of government outside of the MMA. (Santos v. CA, 2000)[580]

O. Oath of Allegiance

All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution. (Art. IX-B, §4)

III. Commission on Elections

Composition of COMELEC
Qualifications of COMELEC Commissioners
Appointment of COMELEC Commissioners
Independence of COMELEC
Nature of COMELEC Powers
Constitutional Powers and Objectives
Statutory Powers of COMELEC
En Banc and Division Cases
Judicial Review
Open Party System
Representation
Elections

Section 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective positions in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years.
(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Sec. 2. The Commission on Elections shall exercise the following powers and functions:
(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.
(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.
(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.
(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

[579] *Benguet State U v. Colting,* G.R. No. 169637, June 8, 2007.
[580] Bernas Primer at 390 (2006 ed.)

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.
(9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.*

Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Section 5. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission.

Section 6. A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.

Section 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

Section 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.
Section 9. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

Section 10. Bona fide candidates for any public office shall be free from any form of harassment and discrimination.

Section 11. Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission.

A. Composition of COMELEC

There shall be a Commission on Elections composed of a **Chairman and six Commissioners**. (Article IX-C, Section 1(1))

B. Qualifications of Members of COMELEC

1. Natural-born citizens of the Philippines;
2. At the time of their appointment, at least thirty-five years of age;
3. Holders of a college degree;
4. Must not have been candidates for any elective positions in the immediately preceding elections.

A majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years. (Article IX-C, Section 1(1))

> **Q:** For purposes of this provision, what does "***engaged in the practice of law***" mean?
> **A:** It means to engage in "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." (Cayetano v. Monsod, 1991)

C. Appointment of COMELEC Members

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment.

Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment.

Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Article IX-C, Section 1(2))

Q: What is the common starting point for appointees to the Commission?
A: February 2, 1987, the day the new Constitution took effect. Thus, in reckoning the seven year term, counting must always start from February 2 even if the appointee took office later. This way the staggering of the terms is preserved.[581]

Facts: Respondents were appointed as ad interim Chairman and Commissioners of the COMELEC. As their appointments were not acted upon by the Commission on Appointments (COA), the President renewed their ad interim appointments twice. Petitioner questioned the validity of appointments on the ground that they violated the constitutional prohibition against temporary appointments and reappointments to the COMELEC.
Held: An ad interim appointment is a permanent appointment, because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into the office. The fact that is subject to confirmation by COA does not alter its permanent character. An ad interim appointment means it is a permanent appointment made by the President in the meantime that Congress is in recess.
The prohibition on reappointment in Section 1(20, Article IX-C of the Constitution does not apply to a by-passed ad interim appointment, because there is no final disapproval under Article VII, Section 16. There must be confirmation by the COA of the previous appointment before the prohibition on appointment can apply. If an interim appointment cannot be renewed, the President will hesitate to make ad interim appointments because most of the appointees will effectively disapproved by mere inaction of the COA. This will nullify the constitutional power of the President to make ad interim appointments. (Matibag v. Benipayo,380 SCRA 49)[582]

Q: In the absence of a Chairman of the COMELEC, the President designated Commissioner Yorac Acting Chairman. Valid?
A: No. Article IX-C, Section 1(2) prohibits the appointment of Members in a temporary or acting capacity. The choice of temporary chairman fall under the discretion of the Commission and cannot be exercised for it by the President. (Brillantes v. Yorac, 1990)

D. Independence of COMELEC

For violating the constitutional mandate of independence of the COMELEC, Sections 17.19 and 25 of RA 9189 (*Overseas Absentee Voting Act of 2003)* insofar as they relate to the creation of Joint Congressional Oversight Committee and grant to it the power to review, revise, amend and approve the Implementing Rules and Regulations promulgated by the COMELEC, were declared unconstitutional. (Makalintal v. COMELEC, 2003)

E. Nature of powers of the COMELEC

Like the CSC, the COMELEC is an administrative agency. As such, therefore, the power it possesses are **executive, quasi-judicial and quasi-legislative**.
By exception, however, it has been given **judicial power** as judge with exclusive original jurisdiction over "all contest relating to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contest involving elective municipal officials decided by trial courts of general jurisdiction or involving elective barangay officials decided by trial courts of limited jurisdiction.[583]

F. Constitutional Powers of COMELEC (under Article IX-C)

(Read complete text of Section 2 above)

1. **Enforcement of election laws.** (Section 2 (1), (4),(6) and (8)).
2. **Deciding election contests.** (Section 2(2)).
3. **Deciding Administrative Questions.** (Section 2(3)).
4. **Deputization of Law-enforcement agencies.** (Section 2(4)).
5. **Registration of Political Parties.** (Section 2(5))
6. **Improvement of elections.** (Section 2(7), (8) and (9)).
7. **Power to Promulgate Rules** (Section 3)
8. **Supervision or regulation of franchises** (Section 4)
9. **Power to recommend executive clemency for violation of election laws and rules.** (Section 5)
10. **In special cases, power to fix the election period.** (Section 9)

1. Enforcement of Election Laws

> **Section 2(1):** "The Commission on Elections shall xxx [e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall."

(See also Section 2(6) and (8))

Such authority includes:

1. Promulgate rules and regulations for the implementation of election laws. (Gallardo v. Tabamo, 1993)
2. Power to Ascertain identity of a political party and its legitimate officer. (LDP v. COMELEC)

[581] Bernas Primer at 391 (2006 ed.)

[582] Jacinto Jimenez, Political Law Compendium, 381 (2006 ed.)

[583] Bernas Primer at 393 (2006 ed.)

3. By virtue of such authority, the COMELEC can require compliance with the rules for the filing of certificates of candidacy, prevent or prosecute election offenses, supervise the registration of voters and the holding of the polls, and see to tie that the canvass of the votes and the proclamation of the winners are done in accordance with law.[584]
4. Such authority includes the power to annul an illegal registry of voters, to cancel a proclamation made by the board of canvassers on the basis of irregular or incomplete canvass, and even to oust the candidate proclaimed notwithstanding that he has already assumed office. It may also reject nuisance candidates.[585]
5. Power to annul an entire municipal election on the ground of post-election terrorism. (COMELEC has extensive powers under the general authority to "enforce and administer all laws relative to the conduct of elections." (Biliwang v. COMELEC, 1982) (Here the COMELEC had found that it was impossible to distinguish the illegal from the valid returns. (Note also that the COMELEC annulled the elections after proclamation))

Power to promulgate rules and regulations for the implementation of election laws. The Commission may promulgate rules and regulations for the implementation of election laws. Such power is deemed implicit in the power to implement regulations. (Gallardo v. Tabamo, 1993)

> Accordingly, where the subject of the action is the enforcement of the provisions of the Omnibus Election Code, the case is within the exclusive jurisdiction of the COMELEC, not of the regular courts. (Gallardo v. Tabamo, 1993)

Power to Ascertain identity of a political party and its legitimate officer. The power to enforce and administer laws relative to the conduct elections, decide all questions affecting elections, register and regulate political parties, and ensure orderly elections, include the ascertainment of the identity of political party and its legitimate officers. (LDP v. COMELEC, 2004) (In this case the SC held that the COMELEC erred in resolving the controversy by granting official candidate status to the LDP candidates either the "Angara Wing" or the "Aquino Wing", because clearly, it is the Party Chairman, who is the Chief Executive Officer of the Party, who has the authority to represent the party in all external affairs and concerns, and to sign documents for and in its behalf.)

[584] Cruz, Philippine Political Law, p. 308 (1995 ed).

[585] Cruz, Philippine Political Law, p. 308 (1995 ed).

The regular courts have no jurisdiction to entertain a petition to enjoin the construction of public works projects within 45 days before an election. (Gallardo v. Tabamo, 218 SCRA 253)

> **Section 2(4):** "The Commission on Elections shall xxx [d]eputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections."

> **Section 2(8):** "The Commission on Elections shall xxx [r]ecommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision."

Article IX-C, Section 2(8); Section 52, Omnibus Election Code: The COMELEC has the power to recommend the imposition of disciplinary action upon an employee it has deputized for violation of its order.

> Since the COMELEC can recommend that disciplinary action be taken against an officer it had deputized, it can investigate an administrative charge against such an officer to determine whether or not it should recommend that disciplinary action be taken against him. (Tan v. COMELEC, 237 SCRA 353)

> **Section 2(6):** "The Commission on Elections shall xxx [f]ile, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices."

Jurisdiction to investigate and prosecute cases. The COMELEC has **exclusive** jurisdiction to investigate and prosecute cases for violations of election laws. (De Jesus v. People, 120 SCRA 760) However, the COMELEC may validly delegate this power to the Provincial Fiscal [Prosecutor]. (People v. Judge Basilla, 179 SCRA 87)

Finding of probable cause. It is well-settled that the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound discretion. The COMELEC exercises the constitutional authority to investigate and where appropriate, prosecute cases for violation of election laws, including acts or omissions

constituting election, fraud, offenses and malpractices. (Baytan v. COMELEC, 2003)

No obligation to search for evidence needed. COMELEC has no obligation to search for the evidence needed. "The task of the COMELEC as investigator and prosecutor, acting upon any election offense complaint is not searching and gathering of proof in support of a complaint for alleged commission of an election offense. A complainant, who in effect accuses another person of having committed an act constituting an election offense, has the burden, as it is his responsibility to follow through his accusation and prove the complaint."[586]

Subject to authority of trial judge. When the Commission acts as prosecutor, its actions and decision are subject to the authority of the trial judge. Even after the Commission has decided that an information be filed, a trial judge before whom the information is filed may still order reinvestigation.

Authority to decide whether to appeal. This power to investigate and prosecute election law violations includes the authority to decide whether or not to appeal the dismissal of a criminal case by the trial court. (COMELEC v. Silva, 286 SCRA 177)

> **Q:** The COMELEC is given authority to investigate and prosecute violations of the election law and Section 7 says that decisions, orders and rulings of the Commission may be reviewed only by the SC on certiorari. After the preliminary investigation conducted by COMELEC lawyers and after the COMELEC approves the report and orders the filing of a criminal case, may the trial court order a reinvestigation and require the presentation of the records of the preliminary investigation made by the COMELEC?
> **A:** Yes. The final orders, rulings and decision of the COMELEC reviewable on certiorari by the SC as provided by law are those rendered in actions of proceedings before the COMELEC and taken cognizance of by said body in the exercise of its adjudicatory or quasi-judicial powers. (such as decisions in election contests. It does not refer to prosecutory function of the Commission) The RTC on the other hand, is given exclusive authority to try and decide criminal cases involving elections. When the COMELEC as prosecutor files a case before a trial court, the trial court acquires jurisdiction and all subsequent dispositions of the case must be subject to approval by the court. Hence, the court may order reinvestigation and require submission of records of the preliminary examination to satisfy itself that there is probable cause for the issuance of a warrant of arrest. (People v. Hon. Delgado, 1990)

The power of the Commission under Section 2(6) covers not just criminal cases but also administrative cases. (Thus, where the Commission has deputized a City Prosecutor as election canvasser, such Prosecutor cannot claim immunity from the power of the Commission on the argument that he comes under the executive department. The Commission has power all persons required by law to perform duties relative to the conduct of elections. However, under Section 2(8), the Commission may merely issue a recommendation for disciplinary action to the President.)[587]

2. Deciding Election Contests

> **Section 2(2):** "The Commission on Elections shall xxx [e]xercise **exclusive original jurisdiction** over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and **appellate jurisdiction** over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
> Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable. "

Powers under Section 2(2):

1. **Exclusive original jurisdiction** over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials;
2. **Appellate jurisdiction** over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
   (*The enumeration found in Section 2(2) excludes jurisdiction over elections for the Sangguniang Kabataan. Jurisdiction over these is given to the DILG. (Alunan III v. Mirasol, 1997)*

> The COMELEC shall exercise… **exclusive original jurisdiction** over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials.[588]

Who decides problems involving "elections, returns, and qualifications" of candidates?
Congressional Candidate: Once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, COMELEC's jurisdiction over election contests relating to

[586] Kilosbayan v. COMELEC (1997)

[587] Bernas Commentary, p 1055 (2003 ed).

[588] Dean Bautista: Decide questions affecting elections (but not to be voted for).

his election, returns and qualifications ends, and the HRET"s own jurisdiction begins (Aggabao v. COMELEC, 2005)

Municipal Offices: In the case of municipal offices; even if the case began with the COMELEC before proclamation before the controversy is resolved, it ceases to be a pre-proclamation controversy and becomes a contest cognizable by the Court of First Instance.[589]

> **Q:** What is the difference between the jurisdiction of the COMELEC before the proclamation and its jurisdiction after proclamation?
> **A:** The difference lies in the due process implications. COMELEC's jurisdiction over a pre-proclamation controversy is administrative or quasi-judicial and is governed by the less stringent requirements of administrative due process (although the SC has insisted that question on "qualifications" should be decide only after a full-dress hearing).
> COMELEC's jurisdiction over "contests" is judicial and is governed by the requirements of judicial process. Hence, even in the case of regional or provincial or city offices, it does make a difference whether the COMELEC will treat it as a pre-proclamation controversy or as a contest.[590]

Exclusive Jurisdiction over pre-proclamation cases. The COMELEC shall have exclusive jurisdiction over all pre-proclamation controversies. (BP 881, Section 242) This should be construed as referring only to regional, provincial and city officials.(Pangilinan v. COMELEC)[591]

RA 7166 Section 15 **prohibits pre-proclamation controversies in national offices (except on questions involving the composition and proceedings of the Board of Canvassers).**[592]

As regards national offices, No pre-proclamation case is allowed regarding the preparation, transmission, receipt, custody and appreciation of the election returns or certificate of canvass. (Pangilinan v. COMELEC, 228 SCRA 36)[593]

> In a congressional election, the losing candidate cannot file a petition for correction of manifest errors. (Vinzons-Chato v. COMELEC, 520 SCRA 166)[594]

Q: Does the COMELEC have authority to review contests involving the election of officers of a barangay federation?

A: No. the power of the COMELEC is over popular elections. (Taule v. Secretary Santos, 1991)

> The COMELEC shall have …a**ppellate jurisdiction** over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Appellate Jursidiction. The COMELEC exercises appellate jurisdiction over contests involving municipal or barangay officials as originally decided by regional or municipal trial courts, and its decision in these cases shall be final, executory and not appealable

> **Q:** Section 9 of RA 6679 makes decisions of a municipal or metropolitan court in a *barangay* election appealable to the regional trial court. Is this valid?
> **A:** No. The COMELEC has exclusive appellate jurisdiction over all contests involving *barangay* elective officials decided by trial court of limited jurisdiction. The jurisdiction of the COMELEC, however, is over questions of fact; questions of law go to the Supreme Court. (Flores v. COMELEC, 1990)

Power to issue writs. The appellate jurisdiction includes, by virtue of Section 50 of BP 967, the power to issue writs of certiorari, prohibition and mandamus.[595]

The COMELEC has the power to review decisions of municipal courts on municipal election contests. And when it does so, the entire case is not opened as what happens in appeals on criminal cases.[596]

Period to Appeal from RTC. Appeal to the COMELEC from the RTC must be filed within 5 days from receipt of a copy of the decision. A motion for reconsideration of the RTC decision is a prohibited pleading, and does not interrupt the running of the period for appeal. (Veloria v. COMELEC)[597]

Under COMELEC Rules of Procedure, the mere filing of the Notice of Appeal is not enough; it should be accompanied by payment of the correct amount of appeal fee, in order that the appeal may be deemed perfected.[598]

Execution Pending Appeal. The COMELEC cannot deprive the RTC of its competence to order execution of judgment pending appeal,

589 Bernas Primer at 396 (2006 ed.)
590 Bernas Primer at 391 (2006 ed.)
591 Jacinto Jimenez, Political Law Compendium, 390 (2006 ed.)
592 Antonio B. Nachura, Outline/Reviewer in Political Law 330 (2006 ed.)
593 Jacinto Jimenez, Election Law 37 (2008).
594 Jacinto Jimenez, Election Law 37 (2008).
595 Bernas Commentary, p 1048 (2003 ed).
596 *Manzala v. Comelec,* GR 176211m May 8, 2007.
597 Antonio B. Nachura, Outline/Reviewer in Political Law 332 (2006 ed.)
598 Antonio B. Nachura, Outline/Reviewer in Political Law 332 (2006 ed.)

because the mere filing of appeal does not divest the trial court of its jurisdiction over a case and the authority to resolve pending incidents. (Edding v. COMELEC, 246 SCRA 502)[599]

> **Rationale.** Such exception is allowed in election cases "to give as much recognition to the worth of the trial judge's decision as that which is initially ascribed by the law to the proclamation of the board of canvassers". Indeed, to deprive trial courts of their discretion to grant execution pending appeal would "bring back the ghost of the 'grab-the-proclamation, prolong the protest' techniques so often resorted to by devious politicians in the past in their efforts to perpetuate their hold on an elective public office." (Santos v. COMELEC, 2003)[600]
>
> It was held that RTC may grant a motion for execution pending appeal when there are valid and special reasons to grant the same such as:
> 1. The public interest or the will of the electorate;
> 2. The shortness of the remaining portion of the term;
> 3. The length of time that the election contest has been pending. (Navarosa v. COMELEC, 2003)
>
> The motion for execution pending appeal should be filed before the expiration of the period for appeal. (Relampos v. Cumba, 243 SCRA 757)

Q: Does the COMELEC have jurisdiction to issue writs of *certiorari, mandamus, quo warranto* or *habeas corpus*?
A: Yes, it does, but only in aid of its appellate jurisdiction over election protest cases involving elective municipal officials decided by courts of general jurisdiction. (This means that its jurisdiction is concurrent with that of the Supreme Court under Article VIII, Section 5(1). (Carlos v. Judge Angeles, 2000)[601]

Congressional Candidate. The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the proper Electoral Tribunal – unless the proclamation was invalid.[602]

Plebiscites. The Comelec has jurisdiction over cases involving plebiscites. Thus where the question was whether the electorate of Taguig voted in favor of, or against the conversion of the municipality of Taguig into a highly urbanized city in the plebiscite conducted for the purpose, the Comelec correctly assumed jurisdiction. The problem was not for regular courts. It was not a case calling for the exercise of judicial power since it did not involve the violation of any legally demandable right and its enforcement. There was no plaintiff or defendant in the case. It merely involved the ascertainment of the vote of the electorate of Taguig.[603]

Q: Does the Commission have the power to transfer municipalities form one congressional district to another for the purpose of preserving proportionality?
A: No. This is not one of the broad power granted by Section 2(2). Neither is it what is referred to by the Ordinance Appended to the Constitution (Sections 2 and 3) authorizing the Commission to make " minor adjustments". The deliberations of the Constitutional Commission on the subject clearly excluded the power to transfer whole municipalities. (Montejo v. COMELEC, 1995)

Power to Punish Contempt. The power to punish contempt can be exercised only in connection with judicial functions and not administrative functions. (Masangcay v. COMELEC, 6 SCRA 27)

> Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices **shall be final, executory, and not appealable**. "

. (*This rule does not conflict with the minimum appellate jurisdiction of the SC under Article VIII, Section 5(2), which covers only the final judgments and orders of courts of justice. The Commission is not a judicial tribunal but only an administrative body.)* It should be noted that, its decisions, orders and rulings may be challenged in a petition for *certiorari* with the SC under Article IX-A, Section 7, on the ground of grave abuse of discretion.[604]

The non-appealable character refers only to questions of fact and not of law. Such decisions remain subject to the jurisdiction of the SC through the special civil action of certiorari under Rule 65 in accordance with Article IX-A, Section 7.(Rivera v. COMELEC, 1991)

3. Deciding Administrative Questions

> **Section 2(3):** "The Commission on Elections shall xxx [d]ecide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters."

Questions on Right to Vote. The COMELEC cannot decide the right to vote, which refers to the

[599] Antonio B. Nachura, Outline/Reviewer in Political Law 332 (2006 ed.)
[600] Antonio B. Nachura, Outline/Reviewer in Political Law 332 (2006 ed.)
[601] Bernas Primer at 393 (2006 ed.)
[602] *Planas v Comelec,* G.R. No. 167594, March 10, 2006.
[603] *Buac and Bautista v. Comelec,* G.R. No. 155855, January 26, 2004.
[604] Cruz, Philippine Political Law, p. 311 (1995 ed).

inclusion or exclusion of voters. (2001 Bar Question)

> The Constitution prevents the COMELEC, in the exercise of its administrative powers and functions, to decide questions involving the right to vote. (It may do so, however, in the discharge of its duties concerning registration of voters, except that its decision shall be subject to judicial review. Such power comes within its quasi-judicial authority and may be validly exercised as incidental to its powers of regulation.)[605]

Change in polling places. While changes in the location of polling places may be initiated by the written petition of the majority of the voters, or by agreement of all the political parties, ultimately, it is the COMELEC that determines whether a change is necessary after due notice and hearing. (Cawasa v. COMELEC, 2002)

The Supreme Court held that the contempt power conferred upon the COMELEC by law was an inherently judicially prerogative and could not be exercised by it in connection with the discharge of its purely routinary or administrative duties, as distinguished from quasi-judicial duties. (Guevara v. COMELEC)

4. Deputization of Law Enforcement Agencies

> **Section 2(4):** "The Commission on Elections shall xxx [d]eputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections."

It should be stressed that this power may be exercised only with the consent of the President, or negatively stated, may not be exercised without his permission.[606]

Q: What is the scope of power of the Commission over deputized officers?
A: The power of the Commission over deputized officers under Section 2(6) covers not just criminal cases but also administrative cases. Thus, where the Commission has deputized a City Prosecutor as election canvasser, such Prosecutor cannot claim immunity form the power of the Commission on the argument that he comes under the executive department. The Commission has power over all persons required by law to perform duties relative to the conduct of elections. However, under Section 2(8), the Commission may merely issue a recommendation for disciplinary action to the President. (Tan v. COMELEC, 1994)

Q: What is one instance that the COMELEC is subordinated to the President?
A: Section 2(8) provides that the COMELEC may merely "recommend to the President the removal of any officer or employee it has deputized, or the imposition of any disciplinary action, for violation or disregard of, or disobedience to, its decision, order, or directive."[607]

5. Registration of Political Parties

> **Section 2(5):** "The Commission on elections shall xxx [r]egister, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
> Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law."

Purpose of Registration.

1. To acquire juridical personality
2. To qualify for accreditation,
3. To be entitled to the rights of political parties, a political party must be registered with the COMELEC (Section 60, Omnibus Election Code)

Reason for presentation of platforms and programs. It is essential that political parties present their programs and platforms of government for the information of the electorate whose support they are seeking as otherwise the voters may not properly and intelligently exercise their suffrages. This rule will also enable the Commission to determine if the party seeking registration is not entitled thereto because it is a religious group, or is subversive in nature or purpose, or does not recognize the Constitution, or being supported by a foreign government.

[605] Cruz, Philippine Political Law, p. 313 (1995 ed); **Nachura:** As an incident to its duties concerning registration of voters, it may decide a question involving the right to vote, **but** its decision shall be subject to judicial review. Antonio B. Nachura, Outline/Reviewer in Political Law 334 (2006 ed.)

[606] Bernas Commentary, p 1052 (2003 ed).

[607] Cruz, Philippine Political Law, p. 314 (1995 ed).

Political Party. Section 80 of the 1965 Election Code and Section 22 of the 1971 Election Code defined a political party as "an organized group of person pursuing the same political ideals in a government and includes its branches and divisions.." the 1978 Election Code adopted the aforequoted definition by providing in Section 199 that "any other group of persons pursuing the same political ideals in the government may register with the Commission and be entitled to the same right and privileges." (Geronimo v. COMELEC, 1981)[608]

Groups which cannot be registered as political parties:

1. Religious denominations or sects;
2. Those who seek to achieve their goals through violence or unlawful means;
3. Those who refuse to uphold and adhere to the Constitution; and
4. Those supported by foreign governments (Article IX-C, Section2(5))

Grounds for Cancellation of Registration. Under RA 7941, COMELEC may motu propio or upon a verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition, on any of the following grounds:

1. It is a religious sect or denomination, organization or association organized for religious purposes;
2. Advocates violence or unlawful means to seek its goal;
3. It is a foreign party or organization;
4. It is receiving support from any foreign government; foreign political party, foundation, organization, whether directly or through any of its officers or members, or indirectly through third parties, for partisan election purposes;
5. It violates or fails to comply with laws, rules and regulations relating to elections;
6. T declares untruthful statements in its petition;
7. It has ceased to exist for at least one year;
8. It fails to participate in the last two preceding elections, or fails to obtain at least 2% of the votes cast under the party-list system in the two preceding elections for the constituency in which it was registered.

One candidate per party for each Political Party. The SC annulled the COMELEC resolution dividing the LDP into "wings", each of which nominate candidates for every elective position and be entitled to representation in the election committees that the COMELEC create. The Court declared that the electoral process envisions one candidate from a political party for each position, and disunity and discord amongst members of a political party should not be allowed to create a mockery thereof. By according both wings representation in the election committees, the COMELEC has eroded the significance of political parties and effectively divided the opposition. (LDP v. COMELEC)

Q: To register for purposes of the electoral process, must an organization be a political party?
A: No.[609]

Q: Is there a distinction between an accredited political party and a registered political party?
A: The concept of accreditation no longer appears in the new Constitution. For purpose of the electoral process, all parties, organizations and coalitions are considered equal.[610]

6. Improvement of Elections

> **Section 2(7):** "The Commission on Elections shall xxx [r]ecommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies."

The Omnibus Election Code has expanded the list of prohibited election practices, changed the limitations on the expenses to be incurred by political parties or candidates, allows the COMELEC to refuse to give due course to certificates of nuisance candidates and assures equal treatment for all candidates privileged or not.[611]

> **Section 2(9):** "The Commission on Elections shall xxx [s]ubmit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall."

The report mentioned here can be the basis of legislation that may improve the conduct of future elections.[612]

7. Power to Promulgate Rules of Procedure

> **Section 3:** "The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre- proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc."*

[608] Bernas Primer at 404 (2006 ed.)

[609] Bernas Primer at 405 (2006 ed.)

[610] Bernas Primer at 405 (2006 ed.)

[611] Cruz, Philippine Political Law, p. 317 (1995 ed).

[612] Cruz, Philippine Political Law, p. 317 (1995 ed).

COMELEC Rules v. Rules of Court. Should there be a conflict between a rule of procedure promulgated by the Commission and a Rule of Court, if the proceeding is before the Commission , the Commission rule should prevail; but if the proceeding is in court, the Rules of Court should prevail. (Aruelo v. CA, 1993)

8. Supervision or Regulation of Franchises

> **Section 4:** "The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections."

Chavez v. COMELEC, 2004: The SC upheld the validity of Section 32, Resolution No. 6520, providing that all materials showing the picture, image or name of a person, and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate for public office shall be immediately removed, otherwise the person and the radio station shall be presumed to have conducted premature campaigning in violation of Section 80 of the Omnibus Election Code.

PPI v. COMELEC, 244 SCRA 272: The SC invalidated the COMELEC resolution requiring newspapers to give, for free, one-half page newspaper space for use by the COMELEC. This was held to be an invalid exercise of the police power, there being no imperious public necessity for the taking of the newspaper space.

SWS v. COMELEC, 181 SCRA 529: The SC held that this power may be exercised only over the media, not over practitioners of media. Thus, in this case the SC invalidated a COMELEC resolution prohibiting radio and TV commentators and newspaper columnists from commenting on the issues involved in the forthcoming plebiscite for the ratification of the organic law establishing the CAR.

Q: Does the power to regulate media during "election period" also extend to the period of a plebiscite or referendum?
A: Yes. Of essence to plebiscite and referenda is "fair submission." Moreover, the formulation of the Constitution is more important in a sense than choice of men who will implement that charter. Evidently, therefore, regulatory power during the period of plebiscite or referendum, is also intended. (Unido v. COMELEC, 1981)

9. Power to Recommend Executive Clemency…

> **Section 5:** "No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission."

10. In Special Cases, Power to Fix Election Period

> **Section 9:** Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

Election Period v. Campaign Period.
Election period refers to the period of time needed for administering an election. It can thus go beyond the date for the casting of ballots.[613]
Campaign period refers to the period of active solicitation of votes. This may be set by the legislature for a period less than the election period.[614] ***Campaign period cannot extend beyond the election day***.[615]

Q: Enumerate some specific recommendatory powers of COMELEC.
A: Section 2(7), (8) and (9). (*See also Section 5)*

E. Statutory Powers

1. The COMELEC shall have *exclusive* charge of the enforcement and administration of all laws relative to the conduct of elections. (BP 881, Section 52)
2. Exercise direct and immediate supervision and control over national and local officials or employees. (BP 881, Section 52(a)).
3. The power to authorize any members of AFP, PNP, NBI to act as deputies during the period of campaign and ending 30 days thereafter when in any are of the country there are persons committing acts of terrorism. (BP 881, Section 52(b)).
4. Promulgate rules and regulations implementing provisions of laws which the Commission is required to enforce. (BP 881 Section 52(c)).
5. Power to summon parties to a controversy pending before it. (BP 881, Section 52(d))

[613] Bernas Commentary, p 1062 (2003 ed).
[614] Bernas Commentary, p 1062 (2003 ed).
[615] Cruz, Philippine Political Law, p. 318 (1995 ed).

6. **Power to punish contempt.** (BP 881, Section 52(d))
7. Power to enforce and execute its decisions, directives, orders and instructions. (BP 881, Section 52(f))
8. Power to prescribe forms to be used in the election, plebiscite or referendum.
9. Power to procure any supplies, equipment, materials or services needed for holding of elections. (BP 881, Section 52(h))
10. **Power to prescribe use or adoption of the latest technological devices.** (BP 881, Section 52(i))
11. **Power to prescribe latest technological and electronic devices upon notice to accredited political parties and candidates not less than 30 days before. The COMELEC is authorized to use an AUTOMATED ELECTION SYSTEM for the process of voting, counting votes, and canvassing of the results.** (RA 8436, Section 6)
12. Power to carry out continuing systematic campaign. (BP 881, Section 52(j))
13. Power to enlist non-partisan group or organizations of citizens (BP 881, Section 52(k))
14. **Power to issue search warrants** during election periods. (BP 881, Section 57(1))
15. Power to stop any election activity, or confiscate tear down, and stop any unlawful, libelous, misleading or false election propaganda, after due notice and hearing. (BP 881, Section 57(2))
16. **Power to inquire into the financial records** of candidates and any organization or group of persons after due notice and hearing. (BP 881, Section 57(3))
17. **Power to declare failure of election and call for special elections** (RA 7166, Section 4)
18. **Divide a province with only one legislative district into two districts for purposes of the election of the members of the Sangguniang Kabataan. (**RA 7166, Section 3(b))

Power to Declare Failure of Elections

The SC said that under BP 881, there are only three instances where a failure of elections may been declare, namely:

1. The election in any polling place has not bee held on the date fixed on account of force majeure, violence, terrorism, fraud or other analogous causes;
2. The election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence terrorism, fraud or other analogous cases; or
3. After the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes. (Sison v. COMELEC, 1999; Pasandalan v. COMELEC, 2002)

Contents of Petition. The SC held that for COMELEC to conduct a hearing on a verified petition to declare a failure of election, it is necessary that the petition must show on its face two conditions:

1. That no voting has taken place in the precinct on the date fixed by law or, even if there was voting, the election nevertheless results in a failure to elect; and
2. The votes not cast would affect the results of the election. (Mitmug v. COMELEC, 230 SCRA 54)

Thus, in this case, for failure of the petition to show the existence of the first condition, the COMELEC did not commit grave abuse of discretion when it dismissed the petition even without a hearing.

G. Examples of Matters Not Within the Powers/Jurisdiction of COMELEC

1. COMELEC has no power to decide questions "involving the right to vote." (Section 2(3) Section 2(6) places cases involving "inclusion or exclusion of voters" under the jurisdiction of courts.[616]
2. The general rule is that the proclamation of a congressional candidate divests COMELEC of jurisdiction in favor of the proper Electoral Tribunal – unless the proclamation was invalid.[617]
3. In the case of municipal offices; even if the case began with the COMELEC before proclamation before the controversy is resolved, it ceases to be a pre-proclamation controversy and becomes a contest cognizable by the Court of First Instance.[618]
4. The COMELEC has no power to make a reapportionment of legislative districts. (Montejo v. COMELEC)
5. The COMELEC cannot prohibit radio and TV commentators and newspaper columnists from commenting on the issues involved in the forthcoming plebiscite for the ratification of the organic law establishing the CAR. (PPI v. COMELEC)
6. The COMELEC cannot deprive the RTC of its competence to order execution of judgment pending appeal, because the mere filing of

[616] Bernas Commentary, p 1051 (2003 ed).
[617] *Planas v Comelec,* G.R. No. 167594, March 10, 2006.
[618] Bernas Primer at 396 (2006 ed.)

appeal does not divest the trial court of its jurisdiction over a case and the authority to resolve pending incidents. (Edding v. COMELEC, 246 SCRA 502)

H. Powers of Chairman

Facts: Respondent as Chairman of the COMELEC removed petitioner as Director of the Education and Information Department and reassigned her to the Law Department. Petitioner argued that only the COMELEC acting as a collegial body can authorize her reassignment.

Held: Under Section 7(4), chapter 2, Subtitle C, Book V of the Revised Administrative Code, the ***Chairman COMELEC is vested with power to make temporary assignments, rotate and transfer personnel in accordance with the provision of the Civil Service Law***. In the exercise of this power, the Chairman is not required by law to secure the approval of the COMELEC en banc. (Matibag v. Benipayo)[619]

I. En Banc/ Two Divisions

> The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre- proclamation controversies. **All such election cases shall be heard and decided in division**, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.* (Article IX-C, Section 3)

The last sentence of Section 3 prescribes two important rules:

1. ***Motions for reconsideration are decided en banc.***

   But a decision en banc is required only when the subject for reconsideration is a "decision," that is, a resolution of substantive issues. Thus, reconsideration of a dismissal based on lack of interest may be heard in division. (Salazar v. COMELEC, 1990)

   However, while a motion to reconsider an interlocutory order of a division should be resolved by the division which issued the interlocutory order, it may be referred to the Comelec en banc if all the members of the division agree. *(Soriano et al v Comelec,* GR 164496-505, April 2, 2007).

   If a case which should go to the Comelec en banc is erroneously filed with a division, it may automatically be elevated to the Comelec en banc. This is not provided for in the Comelec Rules of Procedure, but such action is not prohibited. *(Mutilan v Comelec,* G.R. 1712468, April 2, 2007.)

2. ***Election cases are decided in division.***

   The rule that all election cases, including pre-proclamation cases, should first be heard and decided by the COMELEC in division applies only when the COMELEC exercises its adjudicatory or quasi-judicial functions, not when it exercises purely administrative functions. (Municipal Board of Canvassers v. COMELEC, 2003)

   The conduct of a preliminary investigation before the filing of an information in court does not involve the exercise of adjudicatory function. (Balindong v. COMELEC, 2003)

   Election cases must first be decided in division. Hence the Comelec en banc may not decide an election case still pending before a division. *(Muñoz v Comelec,* G.R. 170678, July 17, 2006.)

Cases which must first be heard and decided in division:

1. All election cases, including pre-proclamation contests, originally cognizable by the Commission in the exercise of its powers under Section 2(2) of Article IX-C.
2. Petition to cancel a certificate of candidacy rests with the COMELEC in division, not he COMELEC en banc. (Bautista v. COMELEC, 2003)
3. Cases appealed from the RTC or MTC. (Abad v. COMELEC, 1999)
4. Petition for certiorari from a decision of the RTC (or MTC).(Soller v. COMELEC, 2000)

Cases by En Banc

1. Motions for reconsideration of "decisions". (Section 3, Article IX-C)
2. Cases that involve the exercise of purely administrative functions.
   - COMELEC en banc may directly assume jurisdiction over a petition to correct manifest errors in the tabulation or tallying of results (*Statement of Votes)* by the Board of canvassers.(Torres v. COMELEC)
     - Statement of Votes is merely a tabulation per precinct of the votes obtained by the candidates as reflected in the election returns. What is involved is simple arithmetic. In making the correction in the computation, the Board of Canvassers acts in an administrative capacity under the control and supervision of the COMELEC. Pursuant to its constitutional function to decide questions affecting elections, the COMELEC en banc has authority to resolve any question pertaining to proceedings of the Board of Canvassers. (Mastura v. COMELEC)
   - The power of the COMELEC to prosecute cases of violation of election laws involves the exercise of administrative powers which may be exercised directly by the

[619] Jacinto Jimenez, Political Law Compendium, 382 (2006 ed.)

COMELEC en banc. (Baytan v. COMELEC, 2003)

Q: Does the COMELEC en banc have jurisdiction to decide election cases?
A: No. This power pertains to the divisions of the Commission. Any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void. (Soller v. COMELEC, 2000)

Q: When is hearing by division required?
A: It is only in the exercise of its adjudicatory or quasi-judicial powers that the COMELEC is mandated to hear and decide cases first by division and then, upon motion for reconsideration, by the COMELEC en banc. The conduct of a preliminary investigation before the filing of an information in court does not involve the exercise of adjudicatory function. (Baytan v. COMELEC, 2003)

Q: Must a motion for reconsideration of an order of dismissal for lack of interest due to the failure of petitioner or counsel to appear for hearing be reviewed by the COMELEC en banc or may it be considered by a division?
A: It may be considered by a division. What the Constitution says must be heard en banc are motions for reconsideration of "decisions," that is resolutions of substantive issues. The described dismissal was not a decision. (Salazar v. COMELEC, 1990)

Q: Is the rule on preferential disposition of election cases suggested by Article IX-A, Section 7 and the requirement in Section 257 of the Omnibus Election CODE that the COMELEC shall decide all election cases brought before it within ninety days from the date of submission a hard and firm rule?
A: No. Considering the tribunal's manpower and logistic limitations, it is sensible to treat the procedural requirements on deadlines realistically. (Alvarez v. COMELEC, 2001)

H. Party System

Section 6: A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.

Section 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

(Relate this to Article VI, Section 5 par.2 providing for 20% of the seats in the House of Representatives being allocated to party-list representatives)

Section 8: Parties…registered under the party-list system…shall be entitled to appoint poll watchers in accordance with law.

I. Representation

Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law. (Article IX-C, Section 8)

J. Elections

1. Election Period

Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter. (Article IX-C, Section 9)

The election period is distinguished from the campaign period in that the latter cannot extend beyond the election day.[620]

2. Equal Protection of Candidates

Bona fide candidates for any public office shall be free from any form of harassment and discrimination. (Article IX-C, Section 10)

Q: Does Section 10 give candidates immunity from suit?
A: No.[621]

Q: Give example of discrimination.
A: Unequal treatment in the availment of media facilities.[622]

3. Funds/ Fiscal Autonomy

Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission. (Article IX-C, Section 11)

K. Review of Decisions

Article IX-A, Section 7. xxx Unless otherwise provided by this Constitution or by law, **any decision, order, or ruling** of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Supreme Court. Only decisions of the COMELEC en banc may be brought to the SC on certiorari (as a special civil action under Rule 65).

What is contemplated by the term final **orders, rulings and decisions** of COMELEC reviewable by *certiorari* by the SC as provided by law are those rendered in actions or proceedings before the COMELEC and taken

[620] Cruz, Philippine Political Law, p. 318 (1995 ed).
[621] Bernas Primer at 407 (2006 ed.)
[622] Bernas Primer at 407 (2006 ed.)

cognizance of by the said body in the exercise of its **adjudicatory** or **quasi-judicial powers**[623]. (Filipinas Engineering and Machine Shop v. Ferrer, 135 SCRA 25) The *certiorari* jurisdiction of the SC does not refer to purely executive powers such as those which relate to the COMELEC's appointing power.[624] (Ambil v. COMELEC, 2000)

Trial Courts. Determinations made by the COMELEC which are merely administrative (not judicial) in character, may be challenged in an ordinary civil action before trial courts. (Filipinas Engineering & Machine Shop v. Ferrer)

- Thus, where what was assailed in the petition for certiorari was the COMELEC's choice of appointee, which is a purely administrative duty, the case is cognizable by the RTC (or the CSC as the case may be).

IV. Commission on Audit

Composition of COA
Qualifications of Commissioners of COA
Appointment of Commissioners
Powers and Duties of COA
Jurisdiction

Section 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, Certified Public Accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

A. Composition of COA

Commission on Audit is composed of a Chairman and two Commissioners.

B. Qualifications of Commissioners

1. Natural-born citizens of the Philippines;
2. At the time of their appointment, at least thirty-five years of age;
3. Certified Public Accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years;
4. Must not have been candidates for any elective position in the elections immediately preceding their appointment.

At no time shall all Members of the Commission belong to the same profession.

C. Appointment of Commissioners

Section 1(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

D. Powers and Duties of COA

Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis:

(a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

(b) autonomous state colleges and universities;

(c) other government-owned or controlled corporations and their subsidiaries; and

(d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

1. General Function of COA

[623] Thus, a person whose certificate of candidacy is rejected or canceled by the COMELEC on the ground, say, that he does not possess the required qualifications, may elevate the matter on *certiorari* to the Supreme Court. (Cruz, Philippine Political Law, p. 319 (1995 ed).

[624] Hence, questions arising from the award of a contract for the construction of voting booths can be brought before a trial court.

It is the function of the COA to examine the accuracy of the records kept by accountable officers and to determine whether expenditures have been made in conformity with law. It is therefore through the Commission on Audit that the people can verify whether their money has been properly spent.[625]

2. Classification of COA's Functions[626]

1. To examine and audit all forms of government revenues;
2. To examine and audit all forms of government expenditures;
3. To settle government accounts;
4. To define the scope of techniques for its own auditing procedures;
5. To promulgate accounting and auditing rules "including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures,";
6. To decide administrative cases involving expenditures of public funds.

To examine and audit all forms of government expenditures;

Post-audit. The provision on post-audit is a recognition of the fact that there are certain government institutions which can be hampered in their operation by pre-audit requirements.[627]

Post-audit Authority. The Commission has only post-audit authority over:

1. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution;
2. Autonomous state colleges and universities;
3. Other government-owned controlled corporations and their subsidiaries;
4. Such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or by the granting institution to submit to such audit as a condition of subsidy or equity.

(Where the internal control system of audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct any deficiencies. Moreover, even in cases where pre-audit is allowed and pre-audit has already been performed, the Commission is not estopped from making a post-audit.)

Private Auditors. Public corporations may employ private auditors. The clear and unmistakable conclusion from a reading of the entire Section 2 is that the COA's power to examine and audit is non-exclusive. On the other hand, the COA's authority to define the scope of its audit, promulgate auditing rules and regulations, and disallow unnecessary expenditures is exclusive.
However, as the constitutionally mandated auditor of all government agencies, the COA's findings and conclusions necessarily prevail over those of private auditors, at least insofar as government agencies and officials are concerned.[628]

> **Compromise Agreement.** The participation by the City in negotiations for an amicable settlement of a pending litigation and its eventual execution of a compromise agreement relative thereto, are indubitably within its authority and capacity as a public corporation, and a compromise of a civil suit in which it is involved as a party is a perfectly legitimate transaction, not only recognized but even encouraged by law. Thus, COA committed grave abuse of discretion when it disallowed the City's appropriation of P30,000 made conformably with the compromise agreement. (Osmena v. COA, 238 SCRA 463)
>
> **Salary Voucher.** The duty to pass in audit a salary voucher is discretionary. (Gonzales v. Provincial Board of Iloilo, 12 SCRA 711)
>
> The SC held that the COA has the power to overrule the NPC (National Power Corporation) General Counsel on post-audit measures relative to the determination of whether an expenditure of a government agency is irregular, unnecessary, extravagant or unconscionable.

Q: May COA in the exercise of its auditing function, disallow the payment of backwages to employees illegally dismissed and say that the responsibility belongs to the official who dismissed them in bad faith?
A: No. COA cannot say that the responsibility belongs to the official who made the illegal dismissal when such official has not been heard. Besides, payment of backwages is not an irregular, unnecessary, excessive or extravagant expense. (Uy et. al. v. COA, 2000)

Q: Does the power of the Commission extend to non-accountable officers?
A: Yes. The Commission has authority not just over accountable officers but also over the officers who perform functions related to accounting such as verification of evaluations and computation of fees collectible, and the adoption of internal rules of control. (An Evaluator/Computer, for instance is an indispensable part of the process of assessment and collection and comes within the scope of the Commission's jurisdiction.) (Mamaril v. Domingo, 1993)[629]

[625] Bernas Primer at 409 (2006 ed.)
[626] Bernas Primer at 409 (2006 ed.)
[627] Bernas Commentary, p 1066 (2003 ed).
[628] *DBP v. COA,* G.R. No. 88435. January 16, 2002
[629] Bernas Primer at 409 (2006 ed.)

To settle government accounts

Power to "settle accounts". This means the power to settle *liquidated* accounts, that is, those accounts which may be adjusted simply by an arithmetical process. It does not include the power to fix the amount of an *unfixed* or undetermined debt. (Compania General de Tabacos v. French and Unison, 1919)

> Unliquidated claims present a justiciable question which is beyond the powers of the COA to adjudicate. Recovery based on *quantum meruit* involves a unliquidated claim, because its settlement requires the application of judgment and discretion and cannot be adjusted by simple arithmetical process. (F.F. Manacop Construction Co., Inc. v. CA, 266 SCRA 235)[630]

To secure the release of funds from the Treasury, a **warrant** must be drawn by the proper administrative official and **countersigned** by the Commission on Audit.[631] This counter-signature may be compelled if it can be shown that:

1. The warrant has been legally drawn by the officer authorized by law to do so;
2. An appropriation to which the warrant may be applied exists by virtue of law;
3. An unexpected balance of the amount appropriated is available. (Yncausti v. Wright, 47 Phil. 866)

The duty to countersign the warrant in this case is merely ministerial.

The following have been held to be discretionary:

1. The duty to pass audit a salary voucher. (Gonzales v. Provincial Auditor of Iloilo, 12 SCRA 711)
2. The duty of the Commission on Audit to issue a certificate of clearance to any accountable officer seeking to leave the Philippines. (Lamb v. Philipps, 22 Phil. 473)

Decide Money Claims. The COA can decide money claims based on law. But if a money claim is denied by a law, COA has no authority to pass judgment on the constitutionality of the law.[632]

1998 Bar Question (Money Claims)
Q: The Department of National Defense entered into a contract with Raintree Corporation for the supply of ponchos to the AFP, stipulating that, in the event of breach, action may be filed in the proper courts in Manila. Suppose the AFP fails to pay for delivered ponchos, where must Raintreee Corporation file its claim? Why?
A: Raintree Corporation must file its claim with the COA. Under Article IX-D, Section 2(1), the COA has the authority to settle all the accounts pertaining to expenditure of public funds. Raintree Corporation cannot file a case in court. The Republic of the Philippines did not waive its immunity from suit when it entered into the contract with Raintree Corporation for the supply of ponchos for the use of AFP. The contract involves the defense of the Philippines and therefore relates to a sovereign function.
The provision for venue in the contract does not constitute a waiver of the State immunity from suit because the express waiver of this immunity can only be made by a statute.

Authority to define the scope of its audit an examination, establish techniques and methods required therefor.

The SC said that the power of the Commission to define the scope of its audit and to promulgate auditing rules and regulations and the power to disallow unnecessary expenditures is exclusive. (*But its power to examine and audit is not exclusive)*

To promulgate accounting and auditing rules "including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures."

The SC held that the COA has the power to overrule the NPC (National Power Corporation) General Counsel on post-audit measures relative to the determination of whether an expenditure of a government agency is irregular, unnecessary, extravagant or unconscionable.

It was held that COA may stop the payment of the price stipulated in government contracts when found to be irregular, extravagant or unconscionable. (Sambeli v. Province of Isabela, 210 SCRA 80)

COA Circular No 75-6, prohibiting the use of government vehicles by officials who are provided with transportation allowance was held to be a valid exercise of its powers under Section 2, Article IX-D of the Constitution; and the prohibition may be made to apply to officials of the NPC.

Q: The COA reduced the amount that was passed in audit on the ground that the original amount was "excessive and disadvantageous to the

630 Jacinto Jimenez, Political Law Compendium, 394 (2006 ed.)
631 Cruz, Philippine Political Law, p.324
632 *Parreño c. COA,* G.R. 162224 June 7, 2007

government." Does the Commission have the authority to do so?
A: Yes, on the basis of its authority in Article IX-D, Section 2(1). This extends to the accounts of all persons respecting funds or properties received or held by tem in an accountable capacity. (Dincong v. Commissioner Guingona, 1988)[633]

Q: May COA in the exercise of its auditing function, disallow the payment of backwages to employees illegally dismissed and say that the responsibility belongs to the official who dismissed them in bad faith?
A: No. COA cannot say that the responsibility belongs to the official who made the illegal dismissal when such official has not been heard. Besides, payment of backwages is not an irregular, unnecessary, excessive or extravagant expense. (Uy et. al. v. COA, 2000)

Power to veto appropriations. There is now a view to the effect that the critical function of the Commission on Audit under the reworded provision of the Constitution authorizes it to veto appropriations. This can be done, so it is argued, through the power of the Commission to refuse to "examine, audit and settle" any account violating its *own* regulations "for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds properties."[634]

E. Jurisdiction

> Section 3. No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

Water Districts Subject to the Jurisdiction of COA. The Court already ruled in several cases that a water district is a government-owned and controlled corporation with a special charter since it is created pursuant to a special law, PD 198. The COA has the authority to investigate whether directors, officials or employees of GOCC receiving additional allowances and bonuses are entitled to such benefits under applicable laws. Thus, water districts are subject to the jurisdiction of the COA. (De Jesus v. COA, 2003)

PAL (Phil. Airlines) having ceased to be a government-owned or –controlled corporation, is no longer under the audit jurisdiction of the COA. (PAL v. COA, 245 SCRA 39)

2001 Bar Question
Q: The PNB was then one of the leading government –owned banks and it was under the audit jurisdiction of the COA. A few years ago, it was privatized. What is the effect if any, of the privatization of PNB on the audit jurisdiction of the COA?
A: In accordance with the ruling in Pal v. COA, since PNB is no longer owned by the government the COA no longer has jurisdiction to audit it as an institution. Under Article IX-D, Section 2(2), GOCCs and their subsidiaries are subject to audit by the COA.
However, in accordance with Section 2(1), the COA can audit the PNB with respect to its accounts because the government still has equity in it.

Audit of Private Entities
Facts: Petitioners were end-users of copra. PD 276 imposed a levy on copra to be collected by the end-users from the sellers of the copra. The fund was to be used to subsidize the purchase of copra to maintain the stability of the price. The COA audited the petitioners and found that there was a deficiency in their collection of the levy. Petitioners argued that the COA had no authority to audit them as they were not government-owned or controlled corporation.
Held: The argument has no merit. Under the Constitution, the COA has the power to audit non-governmental entities receiving subsidy from or through the government. (Blue Bar Coconut Philippines v. Tantuico, 163 SCRA 716)[635]

In *Bagatsing v. Committee on* Privatization, the Court interpreting *COA Circular No. 89-296 that there is failure of bidding when (a) there is only one offeror, or (b) when all the offers are non-complying or unacceptable,* declared that the COA circular does not speak of accepted bids, but of offerors, without distinction as to whether they are disqualified or qualified. Thus, since in the bidding of the 40% block of Petron shares, there were three offerors, namely Saudi Aramco, Petronas and Westmont—although the latter were disqualified—then there was no failure of bidding.

F. Report

> Section 4. The Commission shall submit to the President and the Congress, within the time fixed by law, an annual report covering the financial condition and operation of the Government, its subdivisions, agencies, and instrumentalities, including government-owned or controlled corporations, and non-governmental entities subject to its audit, and recommend measures necessary to improve their effectiveness and efficiency. It shall submit such other reports as may be required by law.

Purpose of Report. Through the report required by this provision, the President and the Congress shall be informed of the financial status of the government and the manner in which revenues have been collected, appropriation laws have been

[633] Bernas Primer at 410 (2006 ed.)
[634] Cruz, Philippine Political Law, p.329
[635] Jacinto Jimenez, Political Law Compendium, 391 (2006 ed.)

implemented, and expenditures or uses of public funds and properties undertaken. Information contained in this report and the recommendations made by the Commission on Audit will be useful in enabling the government to improve its financial operations.[636]

The authority of the Commission to recommend measure to improve the efficiency and effectiveness of the government empowers it "to conduct the so-called performance audit which consist of the analytical and critical review, assessment and evaluation of the activities, management and fiscal operations of the Government in order to reduce operational costs and losses and promote greater economy and administrative efficiency in public expenditures. This is a modern concept of auditing that goes beyond the mere examination of receipts and expenditures as it extends to the evaluation of the application of funds, to the analysis of expenditures as well as cost benefit studies."[637]

H. Review of Commission's Decisions

The review power of the SC over decision of the Commission is the same as that over the COMELEC- the limited-certiorari power under Rule 65. The jurisdiction of the SC over the Commission is on money matters and not over decisions on personnel movements. Neither is it the task of the SC to review a Commission opinion on tax liability.[638]

[636] Cruz, Philippine Political Law, p.330

[637] Cruz, Philippine Political Law, p.331 quoting Montejo, The New Constitution, 208.

[638] Bernas Commentary, p 83 (2003 ed).

Article X
LOCAL GOVERNMENT

I. LOCAL GOVERNMENTS (Sections 1, 10-14)
II. LOCAL AUTONOMY (Section 2)
III. LOCAL GOVERNMENT CODE (Section 3)
IV. GENERAL POWERS AND ATTRIBUTES (Section 5,6,7)
V. MUNICIPAL LIABILITY
VI. LOCAL OFFICIALS (Section 8,9)
VII. AUTONOMOUS REGIONS
VIII.INTER-GOVERNMENTAL RELATIONS
IX. LOCAL INITIATIVE AND REFERENDUM

GENERAL PROVISIONS

I. Local Governments

Local Government Unit
Quotable Quotes on Nature of Local Governments
Territorial and Political Subdivisions
The Barangay
The Municipality
The City
The Province
Leagues of LGUs/Officials

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

A. What is a Local Government Unit?

A local government unit is a **political subdivision of the State** which is ***constituted by law*** and possessed of substantial control over its own affairs. In a unitary system of government, it is an intra-sovereign subdivision of one sovereign nation, not intended to be an imperium in imperio [empire within an empire)]. (Alvarez v. Guingona GR 118303, 1996)

When the Drafters of the 1987 Constitution enunciated the policy of ensuring the autonomy of local governments, it was never their intention to create an imperium in imperio and install an intra-sovereign political subdivision independent of a single sovereign state. (Batangas CATV v. Court of Appeals, GR No. 138810, 2004)

Q: What is the present form of local government?
A: The present form consists of an executive distinct from the legislative body.[639]

B. Quotable Quotes on Nature of Local Governments

1. "**Ours is still a unitary form of government, not a federal state**. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority." *(Lina v. Pano, GR 129093, 08.30.2001)*
2. "**A Local Government Unit is a political subdivision of the State** which is constituted by law and possessed of substantial control over its own affairs. Remaining to be an intra sovereign subdivision of one sovereign nation, but not intended, however, to be an imperium in imperio, the local government unit is autonomous in the sense that it is given more powers, authority, responsibilities and resources. Power which used to be highly centralized in Manila, is thereby deconcentrated, enabling especially the peripheral local government units to develop not only at their own pace and discretion but also with their own resources and assets." *(Alvarez v. Guingona, GR 118303, 01.31.96)*
3. **An LGGU is created by law and all its powers and rights are sourced therefrom**. It has therefore no power to amend or act beyond the authority given and the limitations imposed on it by law." *(Paranaque v. VM Realty Corp., GR 127820, 07.20.98)*

C. Enumerate the Territorial and Political Subdivisions in Section 1:

The territorial and political subdivisions of the Republic of the Philippines are the:
1. Provinces
2. Cities
3. Municipalities
4. Barangays

There shall be autonomous regions in Muslim Mindanao and Cordilleras as provided in the Constitution. (Section1)

Significance of Section 1. The constitutional significance of Section 1 is that provinces, cities and municipalities and *barangays* have been fixed as the standard territorial and political subdivisions of the Philippines. **This manner of subdividing the Philippines cannot go out of existence except by a constitutional amendment**.[640]

Q: EO 220 dated July 15, 1987 creates the Cordillera Administrative Region (CAR) creating a temporary administrative agency pending the creation of Cordillera Autonomous Region. Does EO 222 thereby create a territorial and political subdivision?
A: No. What is created is not a public corporation but an executive agency under the control of the national government. It is more similar to the regional development councils which the President may create

[639] Bernas Primer at 416 (2006 ed.)

[640] Bernas Primer at 413 (2006 ed.)

under Article X, Section 14. (Cordillera Board Coalition v. COA, 1990)

D. Municipal Corporations

1. Municipal Corporation

A body politic and corporate ***constituted by the incorporation*** of the inhabitants for the purpose of local government.[641]

2. Elements of a Municipal Corporation[642]

1. **Legal creation or incorporation**- the law creating or authorizing the creation or incorporation of a municipal corporation.
2. **Corporate name**- The name by which the corporation shall be known.
   > The Sangguniang Panlalawigan may, in consultation with the Philippine Historical Institute, change the name of the component cities and municipalities, upon the recommendation of the sanggunian concerned; provided that the same shall be effective only upon the ratification in a plebiscite conducted for the purpose in the political unit directly affected. (RA 7160, Section 13)
3. **Inhabitants**- The people residing in the territory of the corporation.
4. **Territory-** The land mass where the inhabitants reside, together with the internal and external waters, and the air space above the land waters.

3. Dual Nature and Functions

Every local government unit created or organized (under the Local Government Code) is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the National Government and as a corporate entity representing the inhabitants of its territory. (RA 7160, Section 15) Accordingly it has dual functions namely:

1. **Public or governmental-** It acts as an agent of the State for the government of the territory and the inhabitants.
2. **Private or proprietary**- It acts as an agent of the community in the administration of local affairs. As such, it acts as a separate entity, for its own purposes, and not as a subdivision of the State (Bara Lidasan v. Comelec, 21 SCRA 496)

E. Creation/ Dissolution of Municipal Corporations

1. Authority to Create

A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sagguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in the Local Government Code (RA 7160, Section 6)

2. Requisites/Limitations on Creation or Conversion

Article X, Section 10: No province, city, municipality or any barangay may be created, divided, merged, abolished, or is its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a **PLEBISCITE** in the political units directly affected.

RA 7160, Section 10: No creation, division or merger, abolition or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Comelec within 120 days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

> It was held that a plebiscite for creating a new province should include the participation of the residents of the mother province in order to conform to the constitutional requirement. (Tan v. Comelec, 142 SCRA 727; Padilla v. Comelec, 214 SCRA 735)
>
> In other words, <u>all political units affected should participate in the plebiscite</u>. If what is involved is a barangay, the plebiscite should be municipality or city-wide; if a municipality or component city, province wide. If a portion of province is to be carved out and made into another province, the plebiscite should include the mother province. (Tan v. COMELEC, 1986)

RA 7160, Section 7: Based on verifiable indicators of viability and projected capacity to provide services, to wit:

1. **<u>Income-</u>** Income must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of population, as expected of the local government unit concerned. Average annual income for the last two consecutive years based on 1991 constant prices should be at least:
   Municipality: 2.5 M
   City: 100M (Year 2000 constant prices, amended by RA 9009)
   Highly urbanized city: 50M
   Province: 20M

[641] Antonio Nachura, Outline on Political Law, 553 (2006)
[642] Antonio Nachura, Outline on Political Law, 553 (2006)

It was held that the Internal Revenue Allotments (IRAs) should be included in the computation of the average annual income of the municipality (for purposes of determining whether the municipality may be validly converted into a city), but under RA 9009, it is specifically provided that for conversion to cities, the municipality's income should not include the IRA. (Alvarez v. Guingona, 252 SCRA 695)

2. **Population-** it shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned.
3. **Land Area**- It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

	Income	Population	Land Area
Barangay		2,000 inhabitants (except in Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where the requirement is 5,000 inhabitants)	
Municipality	2.5M	25,000	50sqkm
City	100M	150,000	100sqkm
Highly Urbanized City	50M	200,000	
Province	20M	250,000	2,000sq hkm

Compliance with the foregoing indicators shall be attested to by the Department of Finance, the NSO and the Lands Management Bureau of the DENR.

The SC said that the requirement that the territory of newly-created local government units be identified by metes and bounds is intended to provide the means by which the area of the local government unit may be reasonably ascertained, i.e., as a toll in the establishment of the local government unit. As long as the territorial jurisdiction of the newly created city may be reasonably ascertained—by referring to common boundaries with neighboring municipalities—then the legislative intent has been sufficiently served. (Mariano v. Comelec, 242 SCRA 211)
[Note: RA 7854, which converted Makati into a city, did not define the boundaries of the new city by metes and bounds, because of a territorial dispute between Makati and Taguig, which was best left for the courts to decide]

3. Beginning of Corporate Existence

Upon the election and qualification of its chief executive and a majority of the members of its sanggunian, unless some other time is fixed therefor by the law or ordinance creating it. (RA 7160, Section 14)

4. Division and Merger; Abolition of LGUs

Division and merger shall comply with same requirements, provided that such division shall not reduce the income, population or land area of the local government unit or units concerned to less than the minimum requirements prescribed; provided further that the income classification of the original local government unit or units shall not fall below its current income classification prior to the division. (RA 7160, Section 8)

Abolition. A local government unit may be abolished when its income, population or land area has been irreversibly reduced to less than the minimum standards prescribed for its creation, as certified by the national agencies mentioned. The law or ordinance abolishing a local government unit shall specify the province, city, municipality or barangay with which the local government unit sought to be abolished will be incorporated or merged. (RA 7160, Section 9)

5. De Facto Municipal Corporations

Requisites:
1. Valid law authorizing incorporation
2. Attempt in good faith to organize under it
3. Colorable compliance with the law.
4. Assumption of corporate powers

The SC declared as unconstitutional Section 68 of the Revised Administrative Code which authorized the President to create municipalities through Executive Order. With this declaration, municipalities created by Executive Order could not claim to be *de facto* municipal corporations because there was no valid law authorizing incorporation. (Pelaez v. Auditor General, 15 SCRA 569)

6. Attack Against Invalidity of Incorporation

No collateral attack shall lie; and inquiry into the legal existence of a municipal corporation is reserved to the State in a proceeding for quo warranto or other direct proceeding. (Malabang v. Benito, 27 SCRA 533) But this rule applies only when the municipal corporation is at least a de facto municipal corporation.

However, where the challenge was made nearly 30 years after the executive order; creating the municipality was issued, or where the municipality has been in existence for all of 16 years before the ruling in *Pelaez v. Auditor General* was promulgated and various governmental acts throughout the years indicate the State's recognition and acknowledgment of the existence of the municipal corporation, the municipal corporation should be considered as a regular *de jure* municipality.

2004 Bar Question:
Q:MADAKO is a municipality composed of 80 barangays, 30 west of Madako River and 50 east thereof. The 30 western barangays, feeling left out of economic initiatives, wish to constitute themselves into a new and separate town to be called Masigla. A law is passed creating Masigla and a plebiscite is made in favor of the law. B. Suppose that one year after Masigla was constituted as a municipality, the law creating it is voided because of defects. Would that invalidate the acts of the municipality and/or its municipal officers? Explain briefly.
Suggested Answer: Although the municipality cannot be considered as a de facto corporation, because there is no valid law under which it was created, the acts of the municipality and of its officers will not be invalidated, because the existence of the law creating it is an operative fact before it was declared unconstitutional. Hence, the previous acts of the municipality and its officers should be given effect as a matter of fairness and justice. (Municipality ofMalabang v. Benito, 27 SCRA 533 [1969]

F. The Barangay

As the basic political unit, the barangay serves as the primary planning and implementing unit of governmental policies, plans, programs, projects and activities in the community, as a forum wherein the collective views of the people may be expressed , crystallized and considered, and where disputes may be amicably settled. (RA 7160, Section 384)

G. The Municipality

The municipality, consisting of a group of baranays, serves primarily as a general purpose government for the coordination of and delivery of basic, regular and direct services and effective governance of the inhabitants within its jurisdiction. (RA 7160, Section 440)
RA 7160 Sections 440-447

H. The City

The city, composed of more urbanized and developed barangays, serves as a general-purpose government for the coordination and delivery of basic, regular and direct services and effective governance of the inhabitants within its territorial jurisdiction. (RA 7160, Section 448)
RA 7160 Sections 448-258

> **Section 12.** Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials.

Q: May a resident of "component cities whose charter prohibit their voters from voting for provincial elective officials" run for a provincial elective office?
A: No. Section 12 says, these are independent of the province. This independence includes the incapacity of its residents to run for provincial office. (Abella v. COMELEC, 1991)

I. The Province

The province composed of a cluster of municipalities and component cities, and as a political and corporate unit of government, serves as a dynamic mechanism for developmental processes and effective governance of local government units within its territorial jurisdiction. (RA 7160, Section 459)
(See RA 7160 Sections 459-468)

J. Autonomous regions in Muslim Mindanao and in Cordilleras

(This will be discussed under Section 15)
(*As of this writing, only one autonomous region, that of the Muslim Mindanao, has been established.)*

K. Special Metropolitan Political Subdivisions

> **Section 11.** The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executive and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby be created shall be limited to basic services requiring coordination.

Pursuant to Article X, Section 11, Congress may, by law, create special metropolitan political subdivisions subject to a plebiscite set forth in Section 20, but the component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executives and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby created shall be limited to basic services requiring coordination.

NOTE: As earlier decided in the Belair case, the MMDA is **NOT** the metropolitan political unit contemplated in Section 11. Rather it is an administrative agency of the government and as such it does not possess police power. It may exrcise only such powers as are given to it by law. Hence, where there is a traffic law or regulation validly enacted by the legislature or those agencies to whom legislative powers have been delegated (the City of Manila in this case) empowering it to confiscate suspend licenses of erring drivers, it

may do perform such acts. Without such law, however, the MMDA has no power.[643]

L. Leagues of LGUs/Officials

(See RA 7160 Sections 491-495; 496-498)

> **Section 13**. Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

Q: Does the grouping contemplated in Section 13 create a new juridical entity?
A: No.[644]

Q: May local government units create these groupings even without prior enabling law?
A: Yes.

Liga ng mga Barangay- Organization of all barangay for the primary purpose of determining the representation of the Liga in the sanggunians, and for ventilating, articulating and crystallizing issues affecting barangay government administration and securing, through proper and legal means, solutions thereto.

> **2003 Bar Question**
> **Q:** Can the Liga ng mga Barangay exercise legislative powers?
> SUGGESTED ANSWER: The Liga ng Mga Barangay cannot exercise legislative powers. As stated in Bito-Onon v. Fernandez. 350 SCRA 732 [2001], it is not a local government unit and its primary purpose is to determine representation of the mga in the sanggunians; to ventilate, articulate, and crystallize issues affecting barangay government administration; and to secure solutions for them through proper and legal means.

League of Municipalities. Organized for the primary purpose of ventilating, articulating and crystallizing issues affecting municipal government administration, and securing, through proper and legal means, solutions thereto.

M. Regional Development Councils

> **Section 14.** The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

Purpose. The purpose of this provision is to foster administrative decentralization as a complement to political decentralization. This is meant to allow bottom-to-top planning rather than the reverse.[645]

Power to Create RDCs. It will be noted that the power to form these development councils is given to the President. He does not need authorization from Congress.[646]

II. Local Autonomy

> **Section 2.** The territorial and political subdivisions shall enjoy local autonomy.

A. Constitutional Provisions

Article II, Section 25: The State shall ensure the autonomy of local governments.
Article X, Section 2: The territorial and political subdivisions shall enjoy local autonomy.
(See also Sections 4,5,6, 7 and 10 of Article X)

B. Significance of Declaration of Local Autonomy

It is meant to free local governments from the well-nigh absolute control by the legislature which characterized local government under the 1935 Constitution. Thus, although a distinction is made between local governments in general and autonomous regions, even those outside the autonomous regions are supposed to enjoy autonomy.[647]

D. Rules on Local Autonomy

"In resumé, the Court is laying down the following rules:

1. Local autonomy, under the Constitution, involves a mere decentralization of administration, not of power, in which local officials remain accountable to the central government in the manner the law may provide;
2. The new Constitution does not prescribe federalism;
3. The change in constitutional language (with respect to the supervision clause) was meant but to deny legislative control over local governments; it did not exempt the latter from legislative regulations provided regulation is consistent with the fundamental premise of autonomy;
4. Since local governments remain accountable to the national authority, the latter may, by law, and in the manner set forth therein, impose disciplinary action against local officials;

[643] *MMDA v. Garin,* G.R. No. 130230, April 15, 2005.
[644] Bernas Primer at 432 (2006 ed.)
[645] Bernas Commentary, p 1098 (2003 ed).
[646] Bernas Commentary, p 1098 (2003 ed).
[647] Bernas Primer at 414 (2006 ed.)

5. **"Supervision" and "investigation" are not inconsistent terms; "investigation" does not signify "control"** (which the President does not have); xxx" *(Ganzon v. CA, GR 93252, 08.05.91)*

E. Meaning of Local Autonomy

*__Local autonomy, under the Constitution, involves a mere *DECENTRALIZATION OF ADMINISTRATION*, not of power__.... (Ganzon v. CA, 1991)

> **Nachura and Agra Notes:** The principle of local autonomy under the 1987 Constitution simply means **decentralization**. (Basco v. Pagcor, 197 SCRA 52)[648] (Lina v. Pano, 2001)
>
> ***Bernas:*** *Local autonomy means more than just decentralization. But the concept of autonomy is relative. Autonomy for local governments in general will be less than for the autonomous regions.*[649]

However, even as we recognize that the Constitution guarantees autonomy to local government units, the exercise of local autonomy remains subject to the power of control by Congress, and the power of general supervision by the President. (Judge Dadole v. COA, 2002)

Q: What is the meaning of local autonomy as it has emerged in recent decisions?
A: It means that local governments have certain powers given by the Constitution which may not be curtailed by the national government, but that, outside of these, local governments may not pass ordinances contrary to statute. (Magtajas v. Pryce Properties, 234 SCRA 255 (1994)).[650]

> **Q:** Do local governments have the power to grant franchise to operate CATV system.
> **A:** No. (Batangas CATV v. CA, 2004)
>
> **Q:** The law says that the budget officer shall be appointed by the Department head upon the recommendation of the head of local government subject to civil service rules and regulations. If none of those recommended by the local government head meets the requirements of law, may the Department head appoint anyone he chooses?
> **A:** No, he must return the recommendations of the local government head explaining why the recommendees are not qualified and ask for a new recommendation. In other words, the recommendation of the local government head is a condition *sine qua non* of the Department's appointing authority. This is the only way local autonomy can be given by recognition the Constitution wants it to have. When in doubt, favor autonomy. (San Juan v. CSC, 1991)
>
> **Q:** May COA reduce the allowance given to judges by local governments?
> **A:** No. Since the Local Government Code authorizes local governments to give allowance to judges and decide how much this should be, local autonomy prohibits the Commission on Audit from interfering with the authority of the local a government by reducing what has been decided by the local government. (Dadole v. COA, 2002; Leynes v. COA, 2003)

F. Regional Autonomy

Regional autonomy is the degree of self-determination exercised by the local government unit vis-à-vis the central government. *(Disomangcop v. Secretary of Public Works and Highways, GR 149848, 11.25.2004)*

"**Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government**. The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business." *(Disomangcop v. Secretary of Public Works and Highways, GR 149848, 11.25.2004)*

Regional autonomy is also a means towards solving existing serious peace and order problems and secessionist movements. Parenthetically, autonomy, decentralization and regionalization, in international law, have become politically acceptable answers to intractable problems of nationalism, separatism, ethnic conflict and threat of secession. However, the creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only "within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines. *(Disomangcop v. Secretary of Public Works and Highways, GR 149848, 11.25.2004)*

G. Fiscal Autonomy

"**Local autonomy includes both administrative and fiscal autonomy.** xxx The Court declared therein that local fiscal autonomy includes the power of the LGUs to, inter alia, allocate their resources in accordance with their own priorities. xxx Further, a basic feature of local fiscal autonomy is the constitutionally mandated automatic release of the shares of LGUs in the national internal revenue." *(Province of Batangas v. Romulo, GR 152774, 05.27.2004)*

[648] Antonio Nachura, Outline on Political Law, 551 (2006)
[649] Bernas Commentary, p 1077 (2003 ed).
[650] Bernas Primer at 415 (2006 ed.)

"Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well. **Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.** It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals. Local fiscal autonomy does not however rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of the economic and planning agency of the government, primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs for the entire country. However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units. The President cannot do so unilaterally." *(Pimentel v. Aguirre, GR 132988, 07.19.2000)*

"xxx the **limited and restrictive nature of the tax exemption privileges under the Local Government Code is consistent with the State policy to ensure autonomy of local governments** and the objective of the Local Government Code to grant genuine and meaningful autonomy to enable local government units to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. The obvious intention of the law is to broaden the tax base of local government units to assure them of substantial sources of revenue." *(PHILRECA v. DILG, GR 143076, 06.10.2003)*

"With the added burden of devolution, it is even more imperative for **government entities to share in the requirements of development**, fiscal or otherwise, by paying taxes or other charges due from them." *(NAPOCOR v. Cabanatuan City, GR 149110, 04.09.2003)*

" xxx in taxing government-owned or controlled corporations, the **State ultimately suffers no loss**." *(Philippine Ports Authority v. Iloilo City, GR 109791, 07.14.2003)*

"The important legal effect of Section 5 (of Article X of the 1987 Constitution) is that henceforth, in **interpreting statutory provisions on municipal fiscal powers**, doubts will have to be resolved in favor of municipal corporations." *(San Pablo City v. Reyes, GR 127708, 03.25.99)*

ACORD v. Zamora (GR 144256, 06.08.2005)
Constitution provides for automatic release of IRA.

The General Appropriation Act of 2000 cannot place a portion of the Internal Revenue Allotment (P10B) in an Unprogrammed Fund only to be released when a condition is met i.e. the original revenue targets are realized, since this would violate the automatic release provision under Section 5, Article X of the Constitution. As the Constitution lays upon the executive the duty to automatically release the just share of local governments in the national taxes, so it enjoins the legislature not to pass laws that might prevent the executive from performing this duty. Both the executive and legislative are barred from withholding the release of the IRA. If the framers of the Constitution intended to allow the enactment of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded differently. Congress has control only over the share which must be just, not over the manner by which the share must be released which must be automatic since the phrase "as determined by law" qualified the share, not the release thereof.

Province of Batangas v. Romulo (GR 152774, 05.27.2004)
GAA cannot amend LGC. Constitution provides for automatic release of IRA.

The General Appropriation Acts of 1999, 2000 and 2001 and resolutions of the Oversight Committee cannot amend the 1991 Local Government Code insofar as they provide for the local governments' share in the Internal Revenue Allotments as well as the time and manner of distribution of said share. A national budget cannot amend a substantive law, in this case the Code. The provisions in the GAA creating the Local Government Special Equalization Fund and authorizing the non-release of the 40% to all local governments are inappropriate provisions. Further, the restrictions are violative of fiscal autonomy. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Further, a basic feature of local fiscal autonomy is the constitutionally mandated automatic release of the shares of local governments in the national internal revenue.

Civil Service Commission v. Department of Budget and Management (GR 158791, 07.22.2005)

"No Report, No Release" policy violates fiscal autonomy.

> A "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy. Such policy cannot be enforced against offices possessing fiscal autonomy such as Constitutional Commissions and local governments. The automatic release provision found in the Constitution means that these local governments cannot be required to perform any act to receive the "just share" accruing to them from the national coffers.

Pimentel v. Aguirre (GR 132988, 07.19.2000)

Executive withholding of 10% of the Internal Revenue Allotment without complying with requirements set forth in Section 284 LGC violated local autonomy and fiscal autonomy of local governments; Withholding amounted to executive control

> "Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well" and that "fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities".

Dadole v. Commission on Audit (GR 125350, 12.03.2002)

DBM cannot impose a limitation when the law imposes none.

> DBM Local Budget Circular No. 55 which provides a limit to allowance that may be given by local governments to judges is null and void since the 1991 Local Government does not prescribe a limit. By virtue of his/ her power of supervision, the President can only interfere in the affairs and activities of a local government unit if it has acted contrary to law.

Leynes v. COA (GR 143596, 12.11.2003)

DBM cannot nullify a statutory power.

> A National Compensation Circular by the Department of Budget and Management cannot nullify the authority of municipalities to grant allowances to judges authorized in the 1991 Local Government Code. The Circular prohibits the payment of representation and transportation allowances from more than one source – from national and local governments.

G. Self-Determination

"Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction. *(Disomangcop v. Secretary of Public Works and Highways, GR 149848, 11.25.2004)*

H. Decentralization

A necessary prerequisite of autonomy is decentralization. Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by subnational units. It is typically a delegated power, wherein a larger government chooses to delegate certain authority to more local governments. Federalism implies some measure of decentralization, but unitary systems may also decentralize. Decentralization differs intrinsically from federalism in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government. Decentralization comes in two forms — deconcentration and devolution.

Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices. This mode of decentralization is also referred to as administrative decentralization.

Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to local government units. This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities." *(Disomangcop v. Secretary of Public Works and Highways, GR 149848, 11.25.**2004**)*

"**Decentralization simply means the devolution of national administration, not power, to local governments.** Local officials remain accountable to the central government as the law may provide." *(Pimentel v. Aguirre, GR 132988, 07.19.**2000**)*

> **Q:** Are autonomy and decentralization the same?
> **A:** Not really. Autonomy is either ***decentralization of administration*** or ***decentralization of power.***
> There is ***decentralization of administration*** when the central government delegates administrative powers to political subdivisions in order to broaden the base of governmental power an in the process to make local governments more responsive and accountable and ensure their fullest development as self-reliant communities and make them mote effective partners in the pursuit of national development and social progress. At the same time it relieves the central government of the burden of managing local affairs and enable it to concentrate on national concerns…

Decentralization of power on the other hand, involves an abdication of political power in favor of local government units declared to be autonomous. In that case the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central government authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency. (Limbona v. Conte Miguelin, **1989** citing Bernas, Brewing the Storm Over Autonomy)[651]

I. President's General Supervision

Section 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the
scope of their prescribed powers and functions.

1. Power of General Supervision

The power of general supervision is the power of a superior officer to see to it that the lower officers perform their functions in accordance with law. It does not include the power to substitute one's judgment for that of a lower officer in matters where a lower officer has various legal alternatives to choose from.[652]

"Consistent with the doctrine that local government does not mean the creation of imperium in imperio or a state within a State, the Constitution has vested the President of the Philippines the power of general supervision over local government units. Such grant of power includes the **power of discipline over local officials**, keeping them accountable to the public, and seeing to it that their acts are kept within the bounds of law. Needless to say, this awesome supervisory power, however, must be exercised judiciously and with utmost circumspection so as not to transgress the avowed constitutional policy of local autonomy." *(Malonzo v. Zamora, GR 137718, 07.27.99)*

"Hand in hand with the constitutional restraint on the President's power over local governments is the state policy of ensuring local autonomy. xxx **Paradoxically, local governments are still subject to regulation, however limited, for the purpose of enhancing self-government.**" *(Pimentel v. Aguirre, GR 132988, 07.19.2000)*

Q: When Section 187 of the Local Government Code authorizes the Secretary of Justice to pass judgment on the constitutionality or legality of tax ordinances or revenue measures, does he not exercise the power of control?

A: No. He does not thereby dictate the law should be but merely ensures that the ordinance is in accordance with law. (Drilon v. Lim)

Q: Petitioner challenges the right of the President, through the Secretary of Interior to suspend him on the ground that the removal of the phrase "As may be provided by law" from unconstitutional provision has stripped the President and legislature of the power over local governments. Corollarily, he argues that new Constitution has effectively repealed existing laws on the subject. Decide.
A: The power of general supervision of the President includes the power to investigate and remove. Moreover, Section 3 itself of this Article provides that the Local Government Code (LGC) may provide for "removal" thus indicating that laws on the subject are not out of the compass of the legislature. Autonomy does not transform local governments into kingdoms unto themselves. (Ganzon v. CA, 1991)

Q: May the Secretary of the local Government annul the election of officers of a federation of barangay officials?
A: No. Such annulment would amount to control and therefore in excess of executive supervisory powers. (Taule v. Secretary Santos, 1991)[653]

2. Supervisory Structure in the Local Government System

The President has general supervision over all LGUs. But his direct supervisory contact is with autonomous regions, provinces, and independent cities. The rest follow in hierarchal order as indicated in Section 4.

J. Local Autonomy and Legislative Control

"The Constitution did **not**, however, intend, for the sake of local autonomy, to **deprive the legislature of all authority over municipal corporations**, in particular, concerning discipline. The change in constitutional language did not exempt local governments from legislative regulation provided regulation is consistent with the fundamental premise of autonomy." *(Ganzon v. CA, GR 93252, 08.05.91)*

This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that **Congress retains control of the local government units although in significantly reduced degree** now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. xxx By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it."

[651] Bernas Primer at 414 (2006 ed.)
[652] Bernas Primer at 418 (2006 ed.)
[653] Bernas Primer at 419 (2006 ed.)

(Magtajas v. Pryce Properties, GR 111097, 07.20.94)

III. Local Government Code

Principal Guidelines Given to Congress
Effectivity of LGC
Scope of Application
Declaration of Policy
Rules of Interpretation

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

A. Principal Guidelines Given to Congress

The principal guidelines given to Congress for structuring LGUs are:

1. That the structure must be "responsive and accountable" and "instituted though a system of decentralization."
2. The structure must be both sensitive to the needs of the locality, accountable to the electorate of the locality, and freed as much as possible from central government interference.[654]

Q: The 1973 Constitution contained a provision which said that "No change in the existing form of government shall take effect until ratified by a majority of the votes cast in a plebiscite called for the purpose." Why was this not retained?
A: The provision was considered too limitive of the power of Congress.[655]

B. Effectivity of LGC

January 1, 1992, unless otherwise provided herein, after its complete publication in at least one newspaper of general circulation (RA 7160, Section 536)

C. Scope of LGC's Application

The Code shall apply to all provinces, cities, municipalities, barangays and other political subdivisions as may be created by law, and , to the extent herein provided, to officials, offices or agencies of the National Government (RA 7160, Section 536)

[654] Bernas Commentary, p 1081 (2003 ed).
[655] Bernas Primer at 417 (2006 ed.)

D. Declaration of Policy (Section 2)

1. The territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals;
2. Ensure accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum; and
3. Require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

E. Rules of Interpretation

1. Any provision on a power of local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the local government unit.
2. Any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit shall be construed strictly against the person claiming it.
3. The general welfare provisions shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.
4. Rights and obligations existing on the date of effectivity of this Code and arising out of contracts or any other source of prestation involving a local government unit shall be governed by the original terms and conditions of said contracts or the law in force at the time such rights were vested.
5. In the resolution of controversies arising under this Code where no legal provision or jurisprudence applies, resort may be had to the customs and traditions in the place where the controversies take place.[656]

(See page 676-697 of Jack's Compendium(2006))

IV. General Powers and Attributes of LGUs

Powers in General
Governmental Powers
Corporate Powers

[656] Antonio Nachura, Outline on Political Law, 561 (2006)

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

A. Powers in General

1. Sources

1. Article II, Section 25: "The Sate shall ensure the autonomy of local governments."
2. Article X, Sections 5,6, & 7.
3. Statutes (e.g., RA 7160)
4. Charter (particularly of cities)

2. Classification

1. Express, implied, inherent (powers necessary and proper for governance, e.g., to promote health and safety, enhance prosperity, improve morals of inhabitants)
2. Public or governmental; Private or proprietary
3. Intramural, extramural
4. Mandatory, directory; Ministerial, discretionary.

Governmental Powers	Corporate Powers
1. General Welfare 2. Basic Services and Facilities 3. Power to Generate and Apply Resources 4. Eminent Domain 5. Reclassification of Lands 6. Closure and Opening of Roads 7. Local Legislative Power 8. Authority over Police Units	1. To have continuous succession in its corporate name. 2. To sue and be sued 3. To have and use a corporate seal 4. To acquire and convey real or personal property 5. Power to enter into contracts 6. To exercise such other powers as are granted to corporations, subject to the limitations provided in the Code and other laws.

3. Execution of Powers

1. Where statute prescribes the manner of exercise, the procedure must be followed;
2. Where the statute is silent, local government units have discretion to select reasonable means and methods of exercise.[657]

B. Governmental Powers

1. General Welfare (RA 7160, Section 16)
2. Basic Services and Facilities (RA 7160, §17)
3. Power to Generate and Apply Resources (RA 7160 §18; Article X, §§5-7)
4. Eminent Domain (RA 7160, § 19)
5. Reclassification of Lands (RA 7160, § 20)
6. Closure and Opening of Roads (RA 7160, § 21)
7. Local Legislative Power (RA 7160, §§ 48-59)
8. Authority over Police Units (See Article XVI, Section 6; PNP Act)

1. General Welfare

RA 7160, Section 16: Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of general welfare. Within their respective territorial jurisdiction, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among its residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Police power. The general welfare clause is the statutory grant of police power to local government units.

"The **general welfare clause has two branches**.
(1) **General legislative power**, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law.
(2) **Police power proper**, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property." *(Rural Bank of Makati v. Makati, GR 150763, 07.02.2004)*

[657] Antonio Nachura, Outline on Political Law, 562 (2006)

"As with the State, the local government may be considered as having properly exercised its police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. Otherwise stated, **there must be a concurrence of a lawful subject and lawful method**." *(Lucena Grand Central v. JAC, GR 148339 02.23.2005)*

Limitations on the exercise of powers under this clause:

1. Exercisable only within territorial limits of the local government unit, except for protection of water supply.
2. Equal protection clause. (The interests of the public in general, as distinguished from those of a particular class, require the exercise of the power.
3. Due process clause. (The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals)
4. Must not be contrary to the Constitution and the laws. Prohibited activities may not be legalized in the guise of regulation; activities allowed by law cannot be prohibited, only regulated.

   Magtajas v. Pryce Properties: To be valid , an ordinance:
   a. Must not contravene the Constitution and any statute;
   b. Must not be unfair or oppressive;
   c. Must not be partial or discriminatory;
   d. Must not prohibit, but ay regulate trade;
   e. Must not be unreasonable and;
   f. Must be general in application and consistent with public policy.

Cases:

Valid Exercise of Police Power

1. **Closure of Bank.** A local government unit may, in the exercise of police power under the general welfare clause, order the closure of a bank for failure to secure the appropriate mayor's permit and business licenses. (Rural Bank of Makati v. Municipality of Makati, 2004)
2. **Ban on Shipment.** The SC upheld, as legitimate exercise of the police power, the validity of the Puerto Princesa Ordinance "banning the shipment of all live fish and lobster outside Puerto Princesa from 1993-1998 as well as the Sangguniang Panlalawigan Resolution "prohibiting that catching, gathering, possessing, buying, selling and shipment of live marine coral dwelling of aquatic organisms for a period of 5 years, coming from Palawan waters."
3. It was held that the power of municipal corporations is broad and has been said to be commensurate with but to exceed the duty to provide for the real needs of the people in their health, safety, comfort and convenience, and consistently as may be with private rights. Ordinance is not unconstitutional merely because it incidentally benefits a limited number of persons. The support for the poor has long been an accepted exercise of the police power in the promotion of the common good. (Binay v. Domingo, 201 SCRA 508)
4. **Imposition of Annual Fee.** It was held that where police power is used to discourage non-useful occupations or enterprises, an annual permit/ license fee of P100.00 although a bit exorbitant, is valid. (Physical Therapy Organization of the Philippines v. Municipal Board of Manila)
5. The ordinance requiring owners of commercial cemeteries to reserve 6% of their burial lots for burial grounds of paupers was held invalid; it was not an exercise of the police power, but of eminent domain. (QC v. Ericta, 122 SCRA 759)
6. The Manila Ordinance prohibiting barber shops from conducting massage business in another room was held valid, as it was passed for the protection of public morals. (Velasco v. Villegas, 120 SCRA 568)
7. **Zoning Ordinance.** A zoning ordinance reclassifying residential into commercial or light industrial area is a valid exercise of the police power. (Ortigas v. Feati Bank, 94 SCRA 533)
8. The act of the Municipal Mayor in opening Jupiter and Orbit Streets of Bel Air Subdivision, to the public was deemed a valid exercise of police power. (Sangalang v. IAC, 176 SCRA 719)

Invalid Ordinances

1. **LGU may not regulate subscriber rate.** A local government unit may not regulate the subscribe rates charged by CATV operators within its territorial jurisdiction. The regulation and supervision of the CATV industry shall remain vested "solely" in the NTC. Considering that the CATV industry is so technical a field, NTC, a specialized agency, is in a better position than the local government units to regulate it. This does not mean, however, that the LGU cannot prescribe regulations over CATV operators in the exercise of the general welfare clause. (Batangas CATV v. CA, 2004)
2. **Ordinance contrary to statute held invalid.** The ordinance prohibiting the issuance of a business permit to, and cancelling any business permit of any establishment allowing its premises to be used as a casino, and the ordinance prohibiting the operation of a casino, were declared invalid for being contrary to PD 1869 (Charter of PAGCOR)which has the character and force of a statute. (Magtajas)
3. **Where power to grant franchise not granted.** What Congress delegated to the City of Manila in RA 409 (Revised Charter of Manila) with respect to wagers and betting was the power "to license, permit or regulate," not the power to franchise. This means that the license or permit issued by the City of Manila to operate wager or betting activity, such as jai-lai, would not amount to something meaningful unless the holder of the license or permit was also franchised by the National Government to operate. Therefore, Manila Ordinance No. 7065, which

purported to grant ADC a frachise to conduct jai-alai operations, is void and *ultra vires* (Lim v. Pacquing)

RA 7160 expressly authorizes the Mayor to issue permits and licenses for the holding of activities for any charitable or welfare purpose; thus, the Mayor cannot feign total lack of authority to act on requests for such permits. (Olivares v. Sandiganbayan , 1995) But its is the Laguna Lake Development Authority (LLDA), not the municipal government, which has the exclusive jurisdiction to issue permits for the enjoyment of fishery privileges in Laguna de Bay, by virtue of RA 4850, PD 813 and EO 927, because although RA 7160 vests in municipalities the authority to grant fishery privileges in municipal waters, RA 7160 did not repeal the charter of LLDA, and the latter is an exercise of the police power. (LLDA v. CA)

4. The ordinance of Bayambang, Pangasinan, appointing Lacuesta manager of fisheries for 25 years, renewable for another 25 years, was held invalid, ultra vires, as it effectively amends a general law.(Terrado, v. CA, 131 SCRA 373)
5. An ordinance imposing P0.30 police inspection fee per sack of cassava flour produced and shipped out of the municipality was held invalid. It is not a license fee but a tax, unjust and unreasonable, since the only service of the municipality is for the policeman to verify from the drivers of trucks of petitioner the number of sacks actually loaded. (Matalin Coconut v. Municipal Council of Malabang, 143 SCRA 404)
6. The power to issue permits to operate cockpits is vested in the Mayor, in line with the policy of local autonomy. (Philippine Gamefowl Commission v. IAC)
7. The Bocaue, Bulacan ordinance prohibiting the operation of night-clubs, was declared invalid, because of his prohibitory, not merely regulatory, character. (Dela Cruz v. Paras, 123 SCRA 569)
8. It was held that the ordinance penalizing persons charging full payment for admission of children (ages 7-12) in moviehouses was an invalid exercise of police power for being unreasonable and oppressive on business of petitioners. (Balacuit v. CFI)

1993 Bar Question

Q: Mayor Alfredo Lim closed the funhouses in the Ermita district suspected of being fronts for prostitution. To determine the feasibility of putting up a legalized red light district, the city council conducted an inquiry and invited operators of the closed funhouses to get their views. No one honored the invitation. The city council issued subpoenas to compel the attendance of the operators but which were completely disregarded. The council declared the operators guilty of contempt and issued warrants for their arrest. The operators come to you for legal advice, asking the following questions: (1) Is the council empowered to issue subpoenas to compel their attendance? (2) Does the council have the power to cite for contempt?

Suggested Answer: (1) The city council is not empowered to issue subpoenas to compel the attendance of the operators of the fun-houses In the Ermita district. There is no provision in the Constitution, the Local Government Code, or any law expressly granting local legislative bodies the power to subpoena witnesses. As held in Negros Oriental II Electric Cooperative, Inc. vs. Sangguniang Panlungsod of Dumaguete, 155 SCRA 421, such power cannot be implied from the grant of delegated legislated power. Such power is Judicial. To allow local legislative bodies to exercise such power without express statutory basis would violate the doctrine of separation of powers.

(2) The city council does not have the power to cite for contempt. There is likewise no provision in the Constitution, the Local Government Code, or any other laws granting local legislative bodies the power to cite for contempt. Such power cannot be deemed implied in the delegation of legislative power to local legislative bodies, for the existence of such power poses a potential derogation of individual rights.

2. Basic Services and Facilities

RA 7160, Section 17: Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code (within 6 months after the effectivity of this Code) They shall likewise exercise such other powers and discharge such other functions as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

Note that public works and infrastructure projects and other facilities, programs and services funded by the national government under the General Appropriations Act and other laws, are not covered under this section, except where the local government unit is duly designated as the implementing agency for such projects, facilities, programs and services.[658]

Devolution. Devolution refers to the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities. This includes the transfer to the local government units of the records, equipment and other assets and personnel of national agencies and offices. Regional offices of national agencies shall be phased out within one year form the approval of this Code. Career regional directors who cannot be absorbed by the local government unit shall be retained by the national government, without diminution in rank, salary or tenure.[659]

3. Power to Generate and Apply Resources

RA 7160, Section 18: Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees and charges which shall accrue exclusively to their use and disposition and which shall be retained by them; to have a just share in the national taxes which shall be automatically and directly released to them without need of further action; to have an equitable share in the proceeds from the utilization and

[658] Antonio Nachura, Outline on Political Law, 566 (2006)

[659] Antonio Nachura, Outline on Political Law, 567 (2006)

development of the national wealth and resources within their respective territorial jurisdictions including develop, lease, encumber, alienate or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental or welfare purposes, in the exercise of furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

Section 18 of RA 7160 restates and implements Sections 5,6,7 of Article X. But this power is always subject to the limitations which the Congress may provide by law. (Basco v. PAGCOR, 197 SCRA 52) Thus, it was held that the local government units have no power to tax instrumentalities of the National Government, such as PAGCOR.

"The **power to tax** is primarily vested in the Congress; however, in our jurisdictions, it may be exercised by local legislative bodies, **no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution**. Under the latter the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. xxx These policy considerations are consistent with the State policy to ensure autonomy to local governments and the objective of the LGC that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. The power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people." *(Mactan Cebu International Airport v. Marcos, GR 110082, 09.11.96)*

Q: What are the fund sources of local governments?
A: They are:

1. Local taxes, fees and charges;
2. Its share in the national taxes;
3. Its share in the proceeds of the utilization of national resources within their respective areas;
4. Other "sources of revenues" which they may legitimately make use of either in their public or governmental capacity, or private or proprietary capacity.[660]

Q: What is the scope of their power to levy taxes, fees, and charges?
A: They are subject to such guidelines and limitations as Congress may provide. However, such guidelines and limitations to be imposed by Congress must not be such as to frustrate the "basic policy of local autonomy."[661]

Q: What is the share of the national government in such taxes, fees and charges?
A: None.[662]

Q: In what way can local governments share in the fruits of the utilization of local natural resources?
A: Local governments can either have shares from revenues accruing through fees and charges or they can receive direct benefits such as lower rates, e.g., for consumption of electricity generated within their locality.[663]

Fundamental Principle Governing the Exercise of the Taxing and other Revenue-Raising Powers of LGUs (RA 7160, Section 130)

1. Taxation shall be uniform in each LGU;
2. Taxes, fees, charges and other impositions shall be equitable and based as far as practicable on the taxpayer's ability to pay; levied and collected only for public purposes; not unjust, excessive, oppressive or confiscatory; and not contrary to law, public policy, national economic policy, or in restraint of trade;
3. The collection of local taxes, fees and charges and other impositions shall in no case be let to any private person;
4. The revenue collected shall inure solely to the benefit of, and be subject to disposition by the local government unit, unless specifically provided herein; and
5. Each LGU shall as far as practicable evolve a progressive system of taxation.

Cases:

1. The exercise by local governments of the power to tax is ordained by the present Constitution; only guidelines and limitations that may be established by Congress can define and limit such power of local governments. (Philippine Petroleum Corporation v. Municipality of Pililia, Rizal, 198 SCRA 82)
2. Congress has the power of control over local governments; if Congress can grant a municipal corporation the power to tax certain matters, it can also provide for exemptions or even take back the power. xxx The power of local governments to impose taxes and fees is always subject to limitations which Congress may provide by law.xxx Local governments have no power to tax instrumentalities of the National Government and is therefore exempt from local taxes. (Basco v. PAGCOR, 197 SCRA 52)
3. LGUs have the power to create their own sources of revenue, levy taxes, etc., but subject to such guidelines set by Congress. (Estanislao v. costales, 196 SCRA 853)
4. Section 187, RA 7160 which authorizes the Secretary of Justice to review the constitutionality of legality of a tax ordinance—and if warranted, to revoke it on either or both grounds—is valid, and

[660] Bernas Primer at 423 (2006 ed.)

[661] Bernas Primer at 423 (2006 ed.)

[662] Bernas Primer at 423 (2006 ed.)

[663] Bernas Primer at 423 (2006 ed.)

does not confer the power of control over local government units in the Secretary of Justice, as even if the latter can set aside a tax ordinance, he cannot substitute his own judgment for that of the local government unit. (Drilon v. Lim, 1994)

5. The City of Cebu as a LGU, the power to collect real property taxes from the Mactan Cebu International Airport Auhtority (MCIAA v. Marcos, 1996) There is no question that under RA 6958, MCIAA is exempt form the payment of realty taxes imposed by the National Government or any of its political subdivisions; nevertheless, since taxation is the rule, the exemption may be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.
6. While indeed local governments are authorized to impose business taxes, they can do so only if the entity being subjected to business tax is a business. (Thus, for Makati to impose a business tax on a condominium, the city must prove that the condominium is engaged in business.)[664]

Article X, Section 6: "Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them."

Share in National Taxes. Section 6 mandates that (1) the LGUs shall have a "just share" in the national taxes; (2) the "just share" shall be determined by law; and (3) the "just share" shall be automatically released to the LGUs. Thus, where the local government share has been determined by the General Appropration Act, its relese may not be made subject to te condition that "such amount shall be released to the local government units subject to the implementing rules and regulations, including such mechanisms and guidelines for the equitable allocations and distribution of said fund among local government units subject to the guidelines that may be prescribed by the Oversight Committee on Devolution." To subject its distribution and release to the vagaries of the implementing rules and regulations, including the guidelines and mechanisms unilaterally prescribed by the Oversight Committee from time to time, as sanctioned by the assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions, makes the release not automatic and a flagrant violation of the constitutional and statutory mandate that the "just share" of the LGUs "shall be automatically released to them."[665]

Moreover, neither Congress nor the Executive may impose conditions on the release. As the Constitution lays upon the executive the duty to automatically release the just share of local governments in the national taxes, so it enjoins the legislature not to pass laws that might prevent the executive from performing this duty. To hold that the executive branch may disregard constitutional provisions which define its duties, provided it has the backing of statute, is virtually to make the Constitution amendable by statute – a proposition which is patently absurd. Moreover, if it were the intent of the framers to allow the enactment of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded to say "shall be [automatically] released to them as provided by law."[666]

Fundamental Principle Governing the Financial Affairs, Transactions and Operations of LGUs (RA 7160, Section 305)

1. No money shall be paid out of the local treasury except in pursuance of an appropriation ordinance of law;
2. Local government funds and monies shall be spent solely for public purposes;
3. Local revenue is generated only from sources expressly authorized by law or ordinance, and collection thereof shall at all times be acknowledged properly.
4. All monies officially received by a local government officer in any capacity or on any occasion shall be accounted for as local funds, unless otherwise provided by law;
5. Trust funds in the local treasury shall not be paid out except in fulfillment of the purpose for which the trust was created or the funds received;
6. Every officer of the local government unit whose duties permit or require the possession or custody of local funds shall be properly bonded, and such officer shall be accountable and responsible for said funds and for the safekeeping thereof in conformity with the provisions of law;
7. Local governments shall formulate sound financial plans, and the local budgets shall be based on functions, activities, and projects in terms of expected results;
8. Local budget plans and goals shall, as far as practicable, be harmonized with national development plans, goals and strategies in order to optimize the utilization of resources and to avoid duplication in the use of fiscal and physical resources.
9. Local budgets shall operationalize approved local development plans;
10. LGUs shall ensure that their respective budgets incorporate the requirements of their component units and provide for equitable allocation of resources among these component units;
11. National planning shall be based on local planning to ensure that the needs and aspirations of the people is articulated by the LGUs in their respective local development plans are considered in the formulation of budgets of national line agencies or offices;
12. Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the LGUs; and
13. The LGU shall endeavor to have a balanced budget in each fiscal year of operation.

[664] *Yamane v. BA Lepanto Condominium,* G.R. No. 154993, October 25, 2005.

[665] *Batangas v. Executive Secretary*, G.R. No. 152774. May 27, 2004

[666] *Alternative Center v. Zamora,* G.R. No. 144256, June 8, 2005.

1991 Bar Question
Q:The province of Palawan passes an ordinance requiring all owners/operators of fishing vessels that fish in waters surrounding the province to invest ten percent (10%) of their net profits from operations therein in any enterprise located in Palawan. NARCO Fishing Corp., a Filipino corporation with head office in Navotas, Metro Manila, challenges the ordinance as unconstitutional. Decide the case.
Suggested Answer: The ordinance is invalid. The ordinance was apparently enacted pursuant to Article X, Sec. 7 of the Constitution, which entitles local governments to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas. However, this should be made pursuant to law. A law is needed to implement this provision and a local government cannot constitute itself unto a law. In the absence of a law the ordinance in question is invalid.

4. Eminent Domain
RA 7160, Section 19: A Local Government Unit may, through its chief executive and acting pursuant to an **ordinance**, exercise power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner and such offer was not accepted: Provided, further, That the LGU may immediately take possession of the property upon the filing of expropriation proceedings and upon making a deposit with the proper court of at least 15% of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

> "**Local government units have no inherent power of eminent domain** and can exercise it only when expressly authorized by the legislature. By virtue of RA 7160, Congress conferred upon local government units the power to expropriate. xxx There are two legal provisions which limit the exercise of this power: (1) no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws; and (2) private property shall not be taken for public use without just compensation. Thus, the exercise by local government units of the power of eminent domain is not absolute. In fact, Section 19 of RA 7160 itself explicitly states that such exercise must comply with the provisions of the Constitution and pertinent laws." *(Lagcao v. Labra, GR 155746, 10.13. 2004)*

> "Strictly speaking, the power of eminent domain delegated to an LGU is in reality not eminent but **"inferior" domain**, since it must conform to the limits imposed by the delegation, and thus partakes only of a share in eminent domain. Indeed, "the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it." *(Paranaque v. VM Realty Corp., GR 127820, 07.20.98)*

> "It is true that local government units have no inherent power of eminent domain and can exercise it only when expressly authorized by the legislature. It is also true that in delegating the power to expropriate, the legislature may retain certain control or impose certain restraints on the exercise thereof by the local governments. While such delegated power may be a limited authority, it is complete within its limits. Moreover, the limitations on the exercise of the delegated power must be clearly expressed, either in the law conferring the power or in other legislations. **Statutes conferring the power of eminent domain to political subdivisions cannot be broadened or constricted by implication.**" *(Province of Camarines Sur v. CA, 222 SCRA 173)*

Limitations on the Exercise of the Power of Eminent Domain by Local Government Units:
1. Exercised only by the local chief executive, acting pursuant to a valid ordinance;
2. For public use or purpose or welfare, for the benefit of the poor and the landless;
3. Only after a valid and definite offer had been made to, and not accepted by, the owner.

> It was held that the Sangguniang Panlalawigan cannot validly disapprove the resolution of the municipality expropriating a parcel of land for the establishment of a government center. The power of eminent domain is explicitly granted to the municipality under the Local Government Code.

2005 Bar Question
Q: The Sangguniang Bayan of the Municipality of Santa, Ilocos Sur passed Resolution No. 1 authorizing its Mayor to initiate a petition for the expropriation of a lot owned by Christina as site for its municipal sports center. This was approved by the Mayor. However, the Sangguniang Panlalawigan of Ilocos Sur disapproved the Resolution as there might still be other available lots in Santa for a sports center. Nonetheless, the Municipality of Santa, through its Mayor, filed a complaint for eminent domain. Christina opposed this on the following grounds: (a) the Municipality of Santa has no power to expropriate; (b) Resolution No. 1 has been voided since the Sangguniang Panlalawigan disapproved it for being arbitrary; and (c) the Municipality of Santa has other and better lots for that purpose. Resolve the case with reasons.
Suggested Answer: Under Section 19 of R.A. No. 7160, the power of eminent domain is explicitly granted to the municipality, but must be exercised through an ordinance rather than through a resolution. (Municipality ofParanaque v. V.M. Realty Corp., G.R. No. 127820, July 20, 1998)
The Sangguniang Panlalawigan of Ilocos Sur was without the authority to disapprove Resolution No. 1 as the municipality clearly has the power to exercise the right of

eminent domain and its Sangguniang Bayan the capacity to promulgate said resolution. The only ground upon which a provincial board may declare any municipal resolution, ordinance or order invalid is when such resolution, ordinance or order is beyond the powers conferred upon the council or president making the same. Such is not the situation in this case. (Moday v. Court of Appeals, G.R. No. 107916, February 20, 1997)
The question of whether there is genuine necessity for the expropriation of Christina's lot or whether the municipality has other and better lots for the purpose is a matter that will have to be resolved by the Court upon presentation of evidence by the parties to the case.

5. Reclassification of Lands

A city or municipality may, through an ordinance passed after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition:

1. When the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture, or
2. Where the land shall have substantially greater economic value for residential, commercial or industrial purposes, as determined by the sanggunian;

Provided that such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

i. For highly urbanized cities and independent component cities: 15%
ii. For component cities and 1st to 3rd class municipalities: 10%
iii. For 4th to 6th municipalities: 5%.

Provided that agricultural land distributed to land reform beneficiaries shall not be affected by such reclassification.

6. Closure and Opening of Roads

RA 7160, Section 21. A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park or square falling within its jurisdiction, provided that in case of permanent closure, such ordinance must be approved by at least 2/3 of all the members of the sanggunian, and when necessary, an adequate substitute for the public facility shall be provided.

Additional limitations in case of permanent closure:

1. Adequate provision for the maintenance of public safety must be made;
2. The property may be used or conveyed for any purpose for which other real property may be lawfully used or conveyed, but no freedom park shall be closed permanently without provision for its transfer or relocation to a new site.

Note: Temporary closure may be made during an actual emergency, fiesta celebrations, public rallies, etc.

Cases:

1. A municipality has the authority to prepare and adopt a land use map, promulgate a zoning ordinance, and close any municipal road. (Pilapil v. CA, 216 SCRA 33)
2. The closure of 4 streets in Baclaran, Paranaque was held invalid for non-compliance with MMA Ordinance No. 2. Further, provincial roads and city streets are property for public use under Article 424, Civil Code, hence under the absolute control of Congress. They are outside the commerce of man, and cannot be disposed of to private persons. (Note: This case was decided under the aegis of the old Local Government Code) (Macasiano v. Diokno, 212 SCRA 464)
3. One whose property is not located on the closed section of the street ordered closed by the Provincial Board of Catanduanes has no right to compensation for the closure if he still has reasonable access to the general system of streets. (Cabrera v. CA, 195 SCRA 314)
4. The power to vacate is discretionary on the Sanggunian.xxx when properties are no longer intended for public use, the same may be used or conveyed for any lawful purpose, and may even become patrimonial and thus be the subject of common contract. (Cebu Oxygen & Acetylene Co. v. Berciles, 66 SCRA 481)
5. The City Council has the authority to determine whether or not a certain street is still necessary for public use. (Favis v. City of Baguio, 29 SCRA 456)
6. The City Mayor of Manila cannot by himself, withdraw Padre Rada as a public market. The establishment and maintenance of public markets is among the legislative powers of the City of Manila; hence, the need for joint action by the Sanggunian and the Mayor.

7. Local Legislative Power (Exercised by the local sanggunian)

a. Products of legislative action:

1. ***Ordinance***- prescribes a permanent rule of conduct.
2. ***Resolution***- of temporary character, or expresses sentiment.

b. Requisites for validity

1. Must not contravene the Constitution and any statute;
2. Must not be unfair or oppressive;
3. Must not be partial or discriminatory;
4. Must not prohibit but may regulate trade;
5. Must not be unreasonable;
6. Must be general in application and consistent with public policy.

c. Approval of Ordinances

Ordinances passed by the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan shall be approved:

1. If the local chief executive approves the same, affixing his signature on each an every page thereof.
2. If the local chief executive vetoes the same, and the veto is overridden by 2/3 vote of all the members of the sanggunian. The local chief executive may veto the ordinance, only once, on the ground that the ordinance is *ultra vires*, or that it is prejudicial to the public welfare. He may veto any particular item or items of an appropriation ordinance, an ordinance or resolution adopting a development plan and public investment program, or an ordinance directing the payment of money or creating liability. In such a case, the veto shall not affect the items or items which are not objected to. The veto shall be communicated by the local chief executive to the sanggunian within 15 days in case of a province, or 10 days in case of a city or municipality; otherwise, the ordinance shall be deemed approved as if he signed it.

In *Delos Reyes v. Sandiganbayan, 1997,* where petitioner was charged with falsification of a public document for approving a resolution which purportedly appropriate money to pay for the terminal leave of 2 employees when actually no such resolution was passed, the petitioner argued that his signature on the resolution was merely ministerial. The SC disagreed, saying that the grant of the veto power accords the Mayor the discretion whether or not to disapprove the resolution.

"A **sanggunian is a collegial body**. Legislation, which is the principal function and duty of the sanggunian, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the Sanggunian done outside the parameters of the legal provisions aforementioned are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session." *(Zamora v. Caballero, GR 147767, 01.14.2004)*

[Note: Ordinances enacted by the sangguniang barangay shall, upon approval by a majority of all its members, be signed by the punong barangay. The latter has no veto power.]

d. Review by Sangguniang Panlalawigan

Procedure: Within 3 days after approval, the secretary of the sanguniang panlugsod (in component cities) or sangguninang bayan shall forward to the sangguniang panglalawigan for review copies of approved ordinances and resolutions approving the local development plans and public investment programs formulated by the local development councils. The sannguniang panlalawigan shall review the same within 30 days; if it finds that the ordinance or resolution is beyond the power conferred upon the sangguniang panlusgsod or sagguniang bayan concerned, it shall declare such ordinance or resolution invalid in whole or in part. If no action is taken within 30 days, the ordinance or resolution is presumed consisted with law, valid.

e. Review of Barangay Ordinances

Within 10 days from enactment, the sangguniang barangay shall furnish copies of all barangay ordinances to the sangguniang panlungsod or sangguniang bayan for review. If the reviewing sanggunian finds the barangay ordinances inconsistent with law or city or municipal ordinances, the sanggunian concerned shall, within 30 days form receipt thereof, return the same with its commentsand recommendations to the sangguniang barangay for adjustment, amendment or modification, in which case the effectivity of the ordinance is suspended until the revision called for is effected. If no action is taken by the sangguniang panlungsod or sangguniang bayan within 30 days, the ordinance is deemed approved.

f. Enforcement of disapproved ordinances/ resolutions

Any attempt to enforce an ordinance or resolution approving the local development plan and public investment program, after the disapproval thereof, shall be sufficient ground for the suspension or dismissal of the official or employee concerned.

g. Effectivity.

Unless otherwise stated in the ordinance or resolution, the same shall take effect after 10 days from the date a copy thereof is posted in a bulletin board at the entrance of the provincial capitol, or city, municipal or barangay hall, and in at least two other conspicuous places in the local government unit concerned.

i. The gist of all ordinances with penal sanction shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of a newspaper of general circulation

within the province, posting of such ordinances shall be made in all municipalities and cities of the province where the sanggunian of origin is situated.

ii. In the case of highly urbanized and independent component cities, the main features of the ordinance or resolution duly enacted shall, in additions to being posted, be published once in a local newspaper of general circulation within the city; of there is no such newspaper within the city, then publication shall be made in any newspaper of general circulation.

h. Scope of Local Law Making Authority

1. Sanggunians exercise only delegated legislative powers conferred on them by Congress. As mere agents, local governments are vested with the power of subordinate legislation. *(Magtajas v. Pryce, GR 111097, 07.20.94)*
2. It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the State. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe upon the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. *(Batangas CATV v. Court of Appeals, GR 138810, 09.20.2004)*
3. The 1991 Local Government Code provides that local legislative power shall be exercised by the sanggunian. The legislative acts of the sanggunian in the exercise of its lawmaking authority are denominated ordinances. For an ordinance to be valid, it must not only be within the corporate powers of the local government concerned to enact but must also be passed according to the procedure prescribed by law. *(Lagcao v. Labra, GR 155746, October 13, 2004)*
4. A proviso in an ordinance directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing BIR zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 and unduly interferes with the duties statutorily placed upon the local assessor by completely dispensing with his analysis and discretion which the Code and the regulations require to be exercised. Further, the charter does not give the local government that authority. An ordinance that contravenes any statute is *ultra vires* and void. *(Allied Banking Corporation v. Quezon City, GR 154126, 10.11.2005)*

1999 Bar Question

Q: Johnny was employed as a driver by the Municipality of Calumpit, Bulacan. While driving recklessly a municipal dump truck with its load of sand for the repair of municipal streets,Johnny hit a jeepney. Two passengers of the jeepney were killed. The Sangguniang Bayan passed an ordinance appropriating P300,000 as compensation for the heirs of the victims.

1) Is the municipality liable for the negligence of Johnny?

2) Is the municipal ordinance valid?

Suggested Answer:

2) The ordinance appropriating P300,000.00 for the heirs of the victims of Johnny is void. This amounts to appropriating public funds for a private purpose. Under Section 335 of the Local Government Code, no public money shall be appropriated for private purposes.

Alternative Answer: Upon the foregoing considerations, the municipal ordinance is null and void for being ultra vires. The municipality not being liable to pay compensation to the heirs of the victims, the ordinance is utterly devoid of legal basis. It would in fact constitute an illegal use or expenditure of public funds which is a criminal offense. What is more, the ordinance does not meet one of the requisites for validity of municipal ordinances, ie., that it must be in consonance with certain well-established and basic principles of a substantive nature, to wit: [it does not contravene the Constitution or the law, it is not unfair or oppressive. It is not partial or discriminatory. It is consistent with public policy, and it is not unreasonable.]

8. Authority Over Police Units

As may be provided by law. (See Section 6, Article XVI; PNP Act)

C. Corporate Powers

Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises, subject to limitations provided in the Code and other applicable laws. The corporate powers of local government units are:

7. To have continuous succession in its corporate name.
8. To sue and be sued
9. To have and use a corporate seal
10. To acquire and convey real or personal property
11. Power to enter into contracts
12. To exercise such other powers as are granted to corporations, subject to the limitations provided in the Code and other laws.

1. To have continuous succession in its corporate name

2. To sue and be sued

The rule is that suit is commenced by the local executive, upon the authority of the Sanggunian, except when the City Councilors themselves and as representatives of or on behalf of the City, bring action to prevent unlawful disbursement of City funds. (City Council of Cebu v. Cuison, 47 SCRA 325)

> But the municipality cannot be represented by a private attorney. Only the Provincial Fiscal or the Municipal Attorney can represent a province or municipality in lawsuits. This is mandatory. The municipality's authority to employ a private lawyer is limited to situations where the Provincial Fiscal is disqualified to represent it, and the fact of disqualification must appear on record. The Fiscal's refusal to represent the municipality is not legal justification for employing the services of private counsel; the municipality should request the Secretary of Justice to appoint an Acting Provincial Fiscal in place of the one declined to handle the case in court. (Municipality of Pililia Rizal v. CA, 233 SCRA 484)

3. To have and use a corporate seal

LGUs may continue using, modify or change their corporate seal; any change shall be registered with the DILG.[667]

4. To acquire and convey real or personal property

a. The LGU may acquire tangible or intangible property, in any manner allowed by law, e.g., sale, donation, etc.
b. The local government unit may alienate only patrimonial property, upon proper authority.
c. In the absence of proof that the property was acquired through corporate or private funds, the presumption is that it came from the State upon the creation of municipality and thus, is governmental or public property. (Salas v. Jarencio, 48 SCRA 734)
d. Town plazas are properties of public dominion; they may be occupied temporarily, but only for the duration of an emergency (Espiritu v. Pangasinan, 102 Phil 866)
e. A public plaza is beyond the commerce of man, and cannot be the subject of the lease or other contractual undertaking. And, even assuming the existence of a valid lease of the public plaza or part thereof, the municipal resolution effectively terminated the agreement, for it is settled that the police power cannot be surrendered or bargained away through the medium of a contract. (Villanueva v. Castaneda, 154 SCRA 142)
f. Public streets or thoroughfares are property for public use, outside the commerce of man, and may not be the subject of lease or other contracts. (Dacanay v. Asistio, 208 SCRA 404)
g. Procurement of supplies is made through competitive public bidding [PD 526], except when the amount is minimal (as prescribed in PD 526) where a personal canvass of at least three responsible merchants in the locality may be made by the Committee on Awards, or in case of emergency purchases allowed under PD 526.[668]

5. Power to Enter into Contracts

Requisites of valid municipal contract:

1. The local government units has the express, implied or inherent power to enter into the particular contract.
2. The contract is entered in to by the proper department, board, committee, officer or agent. Unless otherwise provided by the Code, no contract may be entered into by the local chief executive on behalf of the local government unit without prior authorization by the sanggunian concerned.
3. The contract must comply with certain substantive requirements, i.e., when expenditure of public fund is to be made, there must be an actual appropriation and a certificate of availability of funds.
4. The contract must comply with the formal requirements of written contracts, e.g. the Statute of Frauds.

Ultra Vires Contracts. When a contract is entered into without the compliance with the 1st and 3rd requisites (above), the same is *ultra vires* and is null and void. Such contract cannot be ratified or validated. Ratification of defective municipal contracts is possible only when there is non-compliance with the second and/or the fourth requirements above. Ratification may either be express or implied.

> In *Quezon City v. Lexber, 2001,* it was held that PD 1445 does not provide that the absence of appropriation ordinance ipso fact makes a contract

[667] Antonio Nachura, Outline on Political Law, 576 (2006)

[668] Antonio Nachura, Outline on Political Law, 576 (2006)

entered into by a local government unit null and void. Public funds may be disbursed not only pursuant to an appropriation law, but also in pursuance of other specific statutory authority. (In this case, BP 337, the law which was then in force, empowered the Mayor to represent the city in its business transactions and sign all warrants drawn on the city treasury and all bonds, contracts and obligations of the city. While the Mayor has power to appropriate funds to support the contracts, neither does BP 337 prohibit him from entering into contracts unless and until funds are appropriated therefor. By entering into the two contracts, Mayor Simon did not usurp the city council's power to provide for the proper disposal of garbage and to appropriate funds therefor. The execution of contracts to address such a need is his statutory duty, just as it is the city council's duty to provide for such service. There is no provision in the law that prohibits the city mayor form entering into contracts for the public welfare unless and until there is a prior authority form the city council.)

Other Cases:

1. A contract of lease granting fishing privileges is a valid and binding contract and cannot be impaired by a subsequent resolution setting it aside and grating the privilege to another. (Unless the subsequent resolution is a police measure, because the exercise of police power prevails over the non-impairment clause.)(Manantan v. La Union, 82 Phil 844)
2. A municipal zoning ordinance, as a police measure, prevails over the non-impairment clause. (Ortigas v. Feati Bank, 94 SCRA 533)
3. Breach of contractual obligations by the City of Manila renders the City liable in damages. The principle of *respondeat superior* applies.

Authority to negotiate and secure grants. (RA 7160, Section 23) the local chief executive may, upon authority of the sanggunian, negotiate and secure financial grants or donations in kind, in support of the basic services and facilities enumerated in Section 17, from local and foreign assistance agencies without necessity of securing clearance or approval form and department agency, or office of the national government or from any higher local government unit; Provided, that projects financed by such grants or assistance with national security implications shall be approved by the national agency concerned.

6. To exercise such other powers as are granted to corporations subject to the limitations provided in the Code and other laws.

V. Municipal Liability

RULE: LGUs and their officials are not exempt from liability for death or injury to persons or damage to property (RA 7160, Section 24)

A. Specific Provisions of Law Making LGUs Liable

1. **Article 2189, Civil Code:** The Local Government Unit is liable in damages or injuries suffered by reason of the defective condition of roads, streets, bridges, public buildings and other public works.
   ***City of Manila v. Teotico**, 22 SCRA 267:* The City of Manila was held liable for damages when a person fell into an open manhole in the streets of the city.
   ***Jimenez v. City of Manila**, 150 SCRA 510:* Despite a management and operating contract with Asiatic Integrated Corporation over the Sta. Ana Public Market, the City of Manila (because of Mayor Bagatsing's admission that the City still has control and supervision) is solidarily liable for injuries sustained by an individual who stepped on a rusted nail while the market was flooded.
   ***Guilatco v. City of Dagupan**, 171 SCRA 382:* Liability of the City for injuries due to defective roads attaches even if the road does not belong to the local government unit, as long as the City exercises control or supervision over said road.
2. **Article 2180 (6th par.) Civil Code:** The State is responsible when it acts through a special agent.
3. **Article 34, Civil Code:** The local government unit is subsidiarily liable for damages suffered by a person by reason of the failure or refusal of a member of the police force to render aid and protection in case of danger to life and property.

B. Liability for Tort

Despite the clear language of Section 24, RA 7160, that local government units and their officials are not exempt form liability for death or injury to persons or damage to property, it is still unclear whether liability will accrue when the local government unit is engaged in governmental functions. Supreme Court decisions, interpreting legal provisions existing prior to the effectivity of the Local Government Code, have come up with the following rules on municipal liability for tort:

1. If the LGU is engaged in governmental functions, it is not liable;
2. If engaged in proprietary functions; LGU is liable.

1. If the LGU is engaged in governmental functions, it is not liable.

i. The prosecution of crimes is a governmental function, and thus, the local government unit may not be held liable therefor. (Palafox v. Province of Ilocos Norte, 102 Phil 1186)

ii. In *Municipality of San Fernando v. Firme, 195 SCRA 692,* the municipality was not

held liable for torts committed by a regular employee, even if the dump truck used belong to the municipality, inasmuch as the employee was discharging governmental (public works) functions.

iii. Delivery of sand and gravel for the construction of municipal bridge in the exercise of the governmental capacity of local governments. The municipality is not liable for injuries that arise in the performance of governmental functions. *(La Union v. Firme,195 SCRA 692)*

Note: For liability to arise under Article 2189 of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof. On the other hand, a municipality's liability under Section 149 of the 1983 Local Government Code for injuries caused by its failure to regulate the drilling and excavation of the ground for the laying of gas, water, sewer, and other pipes, attaches regardless of whether the drilling or excavation is made on a national or municipal road, for as long as the same is within its territorial jurisdiction. *(Municipality of San Juan v. CA, GR 121920, 08.09.2005)*

2. If engaged in proprietary functions, LGU is liable

i. Operation of a ferry service is a proprietary function. The municipality is negligent and thus liable for having awarded the franchise to operate ferry service to another notwithstanding the previous grant of the franchise to the plaintiff. (Mendoza v. De Leon, 33 Phil 508)

ii. Holding of town fiesta is a proprietary function. The Municipality of Malasigue, Pangasinan was held liable for the death of a member of the zarzuela group when the stage collapsed, under the *principle of respondeat superior.* [Note: The Municipal Council managed the town fiesta. While the municipality was held liable, the councilors themselves are not liable for the negligence of their employees or agents.] (Torio v. Fontanilla, 85 SCRA 599)

iii. The operation of a public cemetery is a proprietary function of the City of Manila. The City is liable for the tortuous acts of its employees, under the *principle of respondeat superior.*

iv. Maintenance of cemeteries is in the exercise of the proprietary nature of local governments. The City is liable for breach of agreement. *(City of Manila v. IAC, 179 SCRA 428)*

v. ***Liability for illegal dismissal of an employee***. It was held that inasmuch as there is no finding that malice or bad faith attended the illegal dismissal and refusal to reinstate respondent Gentallan by her superior officers, the latter cannot be held personally accountable for her back salaries. The municipal government therefore, should disburse funds to answer for her claims (back salaries and other monetary benefits form the time of her illegal dismissal up to her reinstatement) resulting from dismissal.

In *City of Cebu v. Judge Piccio, 110 Phil 558,* it was held that a municipal corporation, whether or not included in the complaint for recovery of back salaries due to wrongful removal from office, is liable.

vi. ***Local officials may also be held personally liable***.

City of Angeles v. CA, 261 SCRA 90, where the city officials ordered the construction of a drug rehabilitation center on the open space donate by the subdivision owner in violation of PD 1216, the cost of the demolition of the drug rehabilitation center should be borne by the cit officials who ordered the construction **because they acted beyond the scope of their authority and with evident bad faith.** (However, since the city mayor and the sanggunian members were sued in their official capacity, they cannot be held personally liable without giving them their day in court.)

Rama v. CA, 148 SCRA 496, the Provincial governor and the members of the Provincial Board where held liable in damages in their personal capacity arising form the illegal act of dismissing employees in bad faith. **Where they act maliciously and wantonly and injure individuals rather than discharge a public duty, they are personally liable.**

Correa v. CFI Bulacan, 92 SCRA 312, the Mayor who, without just cause, illegally dismissed an employee, acted with grave abuse of authority, and he not the Municipality of Norzagaray, Bulacan, is personally liable. This liability attaches even if, at the time of execution, he is no longer the Mayor.

Salcedo v. CA, 81 SCRA 408, the Mayor, for his persistent defiance of the order of the CSC to reinstate the employee, was held personally liable for the payment of back salaries.

Pilar v. Sangguniang Bayan of Dasol, 128 SCRA 173, the Mayor was held liable for exemplary and corrective damages for vetoing, without just cause, the resolution of the Sangguniang Bayan appropriating the salary of petitioner.

Nemenzo v. Sabillano, 25 SCRA 1, Mayor Sabillano was adjudged personally liable for payment of back salaries of a policeman who was illegally dismissed. The Mayor cannot hide behind the mantle of his official capacity and

pass the liability to the Muncipality of which he is Mayor.
San Luis v. CA, 1989, Laguna Governor San Luis was held personally liable for moral damages for refusing to reinstate Berroya, quarry superintendent, despite the ruling of the CSC as affirmed by the Office of the President.

C. Liability for Violation of Law

1. Where the Municipality closed a part of a municipal street without indemnifying the person prejudiced thereby, the Municipality can be held liable for damages. (Abella v, Municipality of Naga, 90 Phil 385)
2. Lack of funds does not excuse the Municipality from paying the statutory minimum wage of P120 a month to its employees. The payment of the minimum wage is a mandatory statutory obligation of the Municipality. (Racho v. Municipality of Ilagan, Isabela)
3. The Municipality of Bunawan, Agusan del Sur, through the Mayor was held in contempt and fined P1,000.00 with a warning, because of the refusal of the Mayor to abide by a TRO issued by the Court.

D. Liability for Contracts

1. Rule: A municipal corporation, like an ordinary person, is liable on a contract it enters into, provided that the contract is *intra vires* (If the contract is *ultra vires*, the municipal corporation is not liable.)
2. A private individual who deals with a municipal corporation is imputed constructive knowledge of the extent of the power or authority of the municipal corporation to enter into contracts.
3. Ordinarily, therefore, the doctrine of estoppel does not lie against the municipal corporation.
4. The ***doctrine of implied municipal liability:*** A municipality may become obligated upon an implied contact to pay the reasonable value of the benefits accepted or appropriated by it as to which it has the general **power to contract.** (Province of Cebu v. IAC, 147 SCRA 447) The doctrine applies to all cases where money or other property of a party is received under such circumstances that the general law, independent of an express contract, implies an obligation to do justice with respect to the same.
   i. It was held that the Province of Cebu cannot set up the plea that the contract was *ultra vires* and still retain benefits thereunder.xxx having regarded the contract as valid for purposes of reaping benefits, the Province of Cebu is estopped to question its validity for the purpose of denying answerability. (Province of Cebu v. IAC, 147 SCRA 447)
   ii. **Q:** Does *Province of Cebu v. IAC,* reverse *De Guia v. Auditor General* where the Supreme Court held that the engagement of the services of Atty. De Guia by the Municipal Council of Mondragon, Northern Samar was ulra vires, because a municipality can engage the services of a private lawyer only if the Provincial Fiscal is disqualified from appearing as counsel for the municipality?
   A: Apparently not, because in *Province of Cebu v. IAC,* the Province could not possibly engage the legal services of the Provincial Fiscal, the latter having taken a position adverse to the interest of the Province for having priorly rendered an opinion that the donation was valid.
   iii. Estoppel cannot be applied against a municipal corporation in order to validate a contract which the municipal corporation has no power to make or which it is authorized to make only under prescribed limitations or in a prescribed mode or manner—even if the municipal corporation has accepted benefits therunder. In *San Diego v. Municipality of Naujan,* the SC rejected the doctrine of estoppels, because to apply the principle would enable the municipality to do indirectly what it cannot do directly.
   iv. In *Muncipality of Pililia Rizal v. CA,* where the SC said that the municipality cannot be represented by a private attorney. Only the Provincial Fiscal or the Muncipal Attorney can represent a province of municipality in lawsuits. This is mandatory. The municipality's authority to employ a private lawyer is limited to situations where the Provincial Fiscal is disqualified to represent it, and the fact of disqualification must appear on record. The Fiscal's refusal to represent the municipality is not a legal justification for employing the services of private counsel; the municipality should request the Secretary of Justice to appoint an Acting Provincial Fiscals in place of the one who declines to handle the case in court.
   v. But if the suit is filed against a local official which could result in personal liability of the said public official, the latter may engage the services of private counsel. (Mancenido v. CA, 2000)

VI. Local Officials

A. Nature of Office (Agra Notes)

1. A local chief executive is considered an accountable public officer as defined under the Revised Penal Code since he/ she, in the discharge of his/ her office, receives money or property of the government which he/ she is duty bound to account for. Thus, a local chief executive is guilty of malversation upon finding that he/ she received public funds and was unable to satisfactorily account for the same. *(Tanggote v. Sandiganbayan, GR 103584, 09.02.94)*

2. A local chief executive is mandated to abide by Article I of Section 444(b)(x) of 1991 Local Government Code which directs executive officials and employees of the municipality to faithfully discharge their duties and functions as provided by law. *(Velasco v. Sandiganbayan, GR 160991, 02.28.2005)*

3. The 1987 Constitution provides that no elective official shall be eligible for appointment or designation in any capacity to any other public office or position during his/ her tenure in order that they may serve full-time with dedication. Thus, a local chief executive cannot be appointed as chairperson of the Subic Bay Metropolitan Authority since such office is not an *ex officio* post or attached to the office of the local chief executive. *(Flores v. Drilon, GR 104732, 06.22.93)*

4. The municipal mayor, being the appointing authority, is the real party in interest to challenge the Civil Service Commission's disapproval of the appointment of his/ her appointee. The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval. *(Dagadag v. Tongnawa, GR 161166-67, 02.03.2005)*

5. The municipal mayor, not the municipality alone must be impleaded in a petition assailing the dismissal of an employee whom he/she appointed even if the mayor acted in his/her official capacity when he dismissed the respondent. If not impleaded, he/she cannot be compelled to abide by and comply with its decision, as the same would not be binding on him/her. *(Civil Service Commission v. Sebastian, GR 161733, 10.11.2005)*

6. A proclaimed candidate who was later on disqualified has no legal personality to institute an action seeking to nullify a decision of the Civil Service Commission concerning the dismissal of municipal employees since he/ she is not a real party in interest. *(Miranda v. Carreon, GR 143540, 04.11.2003)*

7. The city treasurer is the proper disciplining authority in the case of a local revenue officer, the former being the head of agency. *(Garcia v. Pajaro, GR 141199, 07.05.2002)*

8. A punong barangay cannot terminate the services of the barangay treasurer and secretary without the concurrence of sangguniang barangay since this is explicitly required under Section 389 of the 1991 Local Government Code. *(Alquizola v. Ocol, GR 132413, 08.27.99)*

B. Provisions Applicable to Elective and Appointive Local Officials

Prohibited Business and Pecuniary Interest (RA 7160, Section 89): It shall be unlawful for any local government official or employee, directly or indirectly to:

1. Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
2. Hold such interests in any cockpit or other games licensed by the local government unit;
3. Purchase any real estate or other property forfeited in favor of the local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the local government unit;
4. Be a surety of any person contracting or doing business with the local government unit for which a surety is required; and
5. Possess or use any public property of the local government unit for private purposes.
6. The prohibitions and inhibitions prescribed in RA 6713 also apply.

Practice of Profession (Section 90, RA 7160)

1. All governors, city and municipal mayors are prohibited form practicing their profession or engaging in any occupation other than the exercise of their function as local chief executives.
2. Sanggunian members may practice their profession, engage in any occupation, or teach in schools except during session hours, Provided, that those who are also members of the Bar shall not (i) appear as counsel before any court in any civil case wherein the local government unit or any office, agency or instrumentality of the government is the adverse party; (ii) appear as counsel in any

criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office; (iii) collect any fee for their appearance in administrative proceedings involving the LGU of which he is an official; and (iv) use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

It was held that by appearing as counsel for dismissed employees, City Councilor Javellana violated the prohibition against engaging in private practice if such practice represents interests adverse to the government. (Javellana v. DILG, 212 SCRA 475)

3. Doctors of medicine may practice their profession even during official hours of work only on occasion of emergency, provided they do not derive monetary compensation therefrom.

It was held that DILG Memorandum Circular No. 90-81 does not discriminate against lawyers and doctors; it applies to all provincial and municipal officials. (Javellana v. DILG, 212 SCRA 475)

Prohibition Against Appointment (RA 7160, Section 94)

1. No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. Unless otherwise allowed by law or by the primary functions of his office, no local official shall hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including GOCCs or their subsidiaries. (Relate this to Section 7, Article IX-B)
2. Except for losing candidates in barangay election, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government of GOCC or their subsidiaries. (Relate this to Section 6, Article IX-B)

C. Elective Local Officials

Qualifications
Disqualifications
Manner of Election
Date of Election
Term of Office
Rules of Succession
Compensation
Recall
Resignation
Grievance Procedure
Discipline
Cases on Offenses (Agra Notes)
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Complaints
Preventive Suspension
Penalty (Agra Notes)
Administrative Appeal
Execution Pending Appeal
Jurisdiction of Sandiganbayan (Agra Notes)
Effect of Re-election

1. Qualifications (RA 7160, Section 39)

1. Citizen of the Philippines;
2. Registered Voter in the barangay, municipality, city or province, or in the case of a member of the sangguniang panlalawigan, panlungsod or bayan, the district where he intends to be elected;
3. A resident therein for at least 1 year immediately preceding the election'
4. Able to read and write Filipino or any other local language or dialect;
5. On the election day, must be at least 23 years of age [for governor, vice-governor, member of the sangguniang panlalawigan, mayor, vice mayor, or member of the ssangguniang panlungsd of highly urbanized cities]; 21 years of age [for mayor or vice mayor of independent component cities, component cities, or munciplaities]; 18 years of age [for member of the sangguniang panlungsod or sagguniang bayan, or punong barangay or member of the sangguniang barangay], or at least 15 but not more than 21 years of age [candidates for the sangguniang kabataan]
   i. The LGC does not specify any particular date when the candidate must posses Filipino citizenship. Philippine citizenship is required to ensure that no alien shall govern our people. An official begins to govern only upon his proclamation and on the day that his term begins. Since Frivaldo took his oath of allegiance the day that his term begins. Since Frivaldo took his oath of allegiance on June 30, 1995, when his application for repatriation was granted by the Sepcial Committee on Naturalization created under PD 825, he was therefore qualified to be proclaimed. Besides, Section 30 of the LGC speaks of qualifications of elective officials, not of candidates. Furthermore, repatriation retroacts to the date of the filing of his application on August 17, 1994. (Frivaldo v. COMELEC, 257 SCRA 727)
   ii. In *Altajeros v. COMELEC, 2004,* the petitioner took his oath of allegiance on December 17, 1997, but his Certificate of Repatriation was registered with the Civil Registry of Makati City only after 6 years, or on February 18, 2004, and with the Bureau of Immigration on March 1, 2004, thus completing the requirements for repatriation only after he filed his certificate of candidacy, but before the election. On the issue of whether he was qualified to run for Mayor of San Jacinto, Masabate, the Court applied the ruling in

Frivaldo, that repatriation retroacts to the date of filing of the application for repatriation. Petitioner was, therefore, qualified to run for Mayor.

iii. Petitioner who was over 21 years of age on the day of the election was ordered disqualified by the SC when the latter rejected the contention of the petitioner that she was qualified because she was less than 22 years old. The phrase "not more than 21 years old" is not equivalent to "less than 22 years old." (Garvida v. Sales, 271 SCRA 767)

2. Disqualifications (RA 7160, Section 40)

The following are disqualified from running for any elective local position:

1. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment, within two years after serving sentence;
2. Those removed from office as a result of an administrative case;
3. Those convicted by final judgment for violating the oath of allegiance to the Republic.
4. Those with dual citizenship[669];
5. Fugitives from justice in criminal or non-political cases here or abroad;
6. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of the Code;
7. The insane or feeble-minded.

i. Violation of the Anti-Fencing Law involves moral turpitude, and the only legal effect of probation is to suspend the implementation of the sentence. Thus, the disqualification still subsists. (De la Torre v. COMELEC, 258 SCRA 483) Likewise, violation of BP 22 is a crime involving moral turpitude, because the accused knows at the time of the issuance of the check that he does not have sufficient funds in , or credit with, the drawee bank for payment of the check in full upon presentment. (Villaber v. COMELEC, 2001)

ii. Article 73 of the Rules Implementing RA 7160, to the extent that it confines the term "**fugitive from justice**" to refer only to a person "who has been convicted by final judgment" is an inordinate an undue circumscription of the law. The term includes not only those who flee after conviction to avoid punishment, but likewise those who, after being charged, flee to avoid prosecution".
In *Rodriguez v. COMELEC, 259 SCRA 296,* it was held that Rodriuez cannot be considered a "fugitive from justice", because his arrival in the Philippines form the US preceded by at least five months the filing of the felony complaint in the Los Angeles Court and the issuance of the warrant for his arrest by the same foreign court.

iii. Section 40, RA 7160, cannot apply retroactively. Thus, an elective local official who was removed from office as a result of an administrative case prior to January 1, 1992 (date of LGC's effectivity) is not disqualified form running for elective local office (Grego v. COMELEC
In *Reyes v. COMELEC, 254 SCRA 514,* the SC ruled that the petitioner, a Municipal Mayor who had been ordered removed from office by the Sanggunian Panlalawigan, was disqualified, even as he alleged that the decision was not yet final because he had not yet received a copy of the decision. It was shown, however, that he merely refuse to accept delivery of the copy of the decision.

iv. In *Mercado v. Manzano, 307 SCRA 630,* the SC clarified the "dual citizenship" disqualification, and reconciled the same with Section 5, Article IV of the COnsitution on "dual allegiance". Recognizing situation in which a Filipino citizen may, without performing any act and as an involuntary consequence of the conflicting laws of different countries, be also a citizen of another State, the Court explained that "dual citizenship", as a disqualification, must refer to citizens with "dual allegiance". Consequently, persons with mere dual citizenship do not fall under the disqualification.

3. Manner of Election (RA 7160, Section 41)

1. The governor, vice-governor, city or municipal mayor, city or municipal vice-mayor and punong barangay shall be **elected at large** in their respective units. The sangguniang kabataan chairman shall be elected by the registered voters of the katipunan ng kabataan.
2. The regular members of the sangguniang panlalawigan, panlungsod and bayan shall be elected by district as may be provided by law. The presidents of the leagues of sanggunian members of component cities and municipalities shall serve as *ex officio* members of the sanffuniang panlalawigan concerned. The presidents of the liga ng mga barangay and the pederasyon ng mga sangguniang kabataan elected by their respective chapters, shall serve *ex officio* members of the sangguniang panlalawigan, panlungsod or bayan.

Article X, Section 9. Legislative bodies of local governments shall have sectoral representation as may be prescribed by law.

[669] Interpreted in the case of Mercado v. Manzano, 307 SCRA 630).

3. In addition, there shall be one sectoral representative from the women, one from the workers, and one from any of the following sectors: urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined by sanggunian concerned within 90 days prior to the holding of the next local elections as may be provided by law. The Comelec shall promulgate the rules and regulations to effectively provide for the election of such sectoral representatives.

4. Date of Election

Every three years on the second Monday of May, unless otherwise provided by law.

5. Term of Office

Three years, starting from noon of June 30, 1992, or such date as may be provided by law, except that of elective barangay officials. No local elective official shall serve for more than three consecutive terms in the same position. The term of office of barangay officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of barangay officials on the second Monday of May, 1997. (RA 8524)

Article X, Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Q: Due to incumbent mayor's death, the vice-mayor succeeds to the office of mayor by operation of law and serves the remainder of the mayor's term. Is he considered to have served a term in that office for the purpose of the three-term limit?
A: No. Section of Article X embodies two policies, viz.:
(1)to prevent political dynasties and
(2) to enhance the freedom of choice of the people. **The term limit of elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position**. Consequently, it is not enough that an individual *served* three consecutive terms in an elective local office, he must also been *elected* to the same position for the same number of times before the disqualification can apply.[670]

Q: When will the three-limit of local elective officials- except barangay officials- apply?
A: Only when these two conditions concur:

1. The local official concerned has been **elected** three consecutive times; and
2. He has fully **served** three consecutive terms. (Borja v. COMELEC, 1998)

[670] Borja v. COMELEC, 1998

SC devised scenarios to explain the application of Article X, Section 8 in *Borja v. COMELEC:*

Q: Suppose A is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election?
A: Yes, because although he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served there full terms in all for the purpose of applying the term limit. Under Art. X, Section 8, voluntary renunciation of office is not considered as an interruption in the continuity of his service for the full term only if the term is one "for which he was elected." Since A is only completing the service of the term for which the deceased and not he was elected, A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term. (Borja v. COMELEC, 1998)

Q: Suppose B is elected mayor and, during his term, he is twice suspended for misconduct for a total of 1 year. If he is twice re-elected after that, can he run for one more term in the next election?
A: Yes, because he has served only two-full terms successively. (Borja v. COMELEC, 1998) **Bernas:** *It is submitted that this is not correct. Suspension does not interrupt his term nor in fact his tenure because the office still belongs to him during suspension. Moreover, the Court's solution rewards wrong doing.*

Q: The case of vice-mayor C who becomes mayor by succession involves a total failure of the two conditions to concur for the purpose of applying Article X, Section 8. Suppose he is twice elected after that term, is he qualified to run again in the next election?
A: Yes, because he was not elected to the office of the mayor in the first terms but simply found himself thrust into it by operation of law. Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor.

Current Rules on Term Limits:

1. Lonzanida was elected Mayor to a third term. His election was challenged, however, and he lost and had to abandon his office. He could still run in the next election year because he did not serve three full terms.[671]
2. Talaga lost when he ran for a third term. The winner, however, lost to him in a recall election and he served the rest of the former winner's term. At the end of this term he could run again because he had not served three full terms.[672]
3. Hagedorn served as Mayor for three full terms. In the first year after the end of his third term, he ran in a recall election. Qualified? Yes, because between the end of his third term and the recall election there was an interruption thus breaking the successiveness.[673]
4. During the third term of a Mayor of a municipality, the municipality was converted to a city. The Mayor was allowed to finish the third term. Could he run as Mayor of the city in the next election? No. There has

[671] *Lonzanida v Comelec,* G.R. No. 135150. July 28, 1999.
[672] *Adormeo v Comelec,* G.R. No. 147927. February 4, 2002.
[673] *Socrates v Comelec,* G.R. No. 154512. November 12, 2002.

been no change in territory nor in constituency. Thus the three term limit applies.[674]

5. When a municipal councilor assumed the office of Vice-Mayor respondent's assumption of office as vice-mayor in January 2004 by operation of law, it was an involuntary severance from his office as municipal councilor resulting in an interruption in the service of his 2001-2004 term. He did not serve the full 2001-2004 term.[675]

6. After serving a full three year term, Alegre was declared to have been invalidly elected. Should that term be counted for purposes of the three term limit? Yes. The decision declaring him not elected is of no practical consequence because he has already served.[676]

Q: RA 7160, Section 43-c limits the term of office of barangay official to three years. Petitioners argue that Section 8, Article X "by excepting barangay officials whose 'terms shall be determined law' from the general provision fixing the term of 'elective local officials' at three years," impliedly prohibits Congress form legislating a three-year term for such officers. Thus, Section 43-C of RA 7160 is unconstitutional. Decide.
A: The Constitution did not expressly prohibit Congress from fixing any term of office of barangay officials. (David v. COMELEC, 1997)

Q: How long then is the term of barangay officials?
A: As may be determined by law. And the Local Government Code, Section 43-c limits their term to three years.

2006 Bar Question. ***Law fixing the terms of local elective officials.***
Q:State whether or not the law is constitutional. Explain briefly.
"A law fixing the terms of local elective officials, other than barangay officials, to 6 years."
Suggested Answer: The law is invalid. Under Article X, Section 8 of the 1987 Constitution, "the term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms." The law clearly goes against the aforesaid constitutional requirement of three year terms for local officials except for barangay officials.

6. Rules of Succession (RA 7160, Sections 444-46)

Permanent Vacancies- A permanent vacancy arises when an elective local officials fills higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is permanently incapacitated to discharge the functions of his office. If a permanent vacancy occurs in the office of:

1. Governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor.
2. Vice-governor or vice-mayor, the highest ranking sanggunian member or, in case of permanent inability, the second highest ranking sanggunian member, and subsequent vacancies shall be filled automatically by the other sanggunian members according to their ranking. Ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding election.
   a) In *Victoria v. Comelec, 229 SXRA 269,* the SC rejected the contention that this provision be interpreted by factoring the number of the voters who actually voted, because the law is clear and must be applied—and the courts may not speculate as the probable intent of the legislature apart form the words used in the law.
   b) In *Menzon v. Petilla, 197 SCRA 251,* it was held that this mode of succession for permanent vacancies may also be observed in the case of temporary vacancies in the same office.
3. Punong barangay, the highest-ranking sanggunian barangay member, or in case of his permanent inability, the second highest ranking barangay member. [Note: A tie between or among the highest ranking sanggunian members shall be resolved by drawing of lots.]
4. Sangguniang member, where automatic succession provided above do not apply: filled by appointment by the President, through the Executive Secretary in the case of the Sanggunian Panlalawigan or sanggunian panlungsod of highly urbanized cities and independent component cities; by the Governor in the case of the sangguniang panlungsod of component cities and sangguniang bayan; and by the city or municipality mayor in the case of sangguniang barangay upon recommendation of the sangguniang barangay concerned.
   However, except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed.
   A nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certificate shall be null and void and shall be a ground for administrative action against the official concerned.

[674] *Latasa v. Comelec.* G.R. No. 154829. December 10, 2003.
[675] *Montebon v COMELEC,* G.R. No. 180444, April 8, 2008.
[676] Ong v. Alegre, G.R. No. 163295, January 23, 2006; Rivera III v. Morales, GR 167591, May 9, 2007.

In case the permanent vacancy is caused by a sangguniang member who does not belong to any political party, the local chief executive shall upon the recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

a) The reason behind the right given to a political party to nominate a replacement when a permanent vacancy occurs in the Sanggunian is to maintain the party representation as willed by the people in the election. (In this case, with the elevation of Tamayo, who belonged to *Reforma-LM* to the position of Vice Mayor, a vacancy occurred in the Sangguninan that should be filled up with someone who belongs to the political party of Tamayo. Otherwise, *Reforma-LM's* representation in the Sanggunian would be diminished. To argue that the vacancy created was that formerlyheld by the 8th Sanggunian member, a *Lakas-NUCD-Kampi* member, would result in the increase in that party's representation in the Sanggunian at the expense of *Reforma-LM.* (Navarro v. CA, 2001)

b) The appointment to any vacancy caused by the cessation from office of a member of the sangguniang barangay must be made by the mayor upon the recommendation of the sanggunian. The recommendation by the sanggunian takes the place of nomination by the political party (since members of the sangguniang barangay are prohibited to have party affiliations) and is considered as a condition sine qua non for the validity of the appointment.

In *Farinas v. Barba, 256 SCRA 396,* where vacancy to be filled was that of a member of the Sangguniang Bayan who did not belong to any political party, the SC held that neither the petitioner nor the respondent was validly appointed. Not the petitioner, because although he was appointed by the Governor, he was not recommended by the Sanggunian Bayan. Neither the respondent, because although he was recommended by the Sanggunian Bayan, he was not appointed by the Governor.

5. Vacancy in the representation of the youth and the barangay in the sanggunian: filled automatically by the official next in rank of the organization concerned.

In *Garvida v. Sales*, 271 SCRA 767, the SC pointed out that under the LGC, the member of the Sangguniang Kabataan who obtained the next highest number of votes shall succeed the Chairman if the latter refuses to assume office, fails to qualify, is convicted of a crime, voluntary resigns, dies is permanently incapacitated, is removed from office, or has been absent without leave for more than three consecutive months. Ineligibility is not one of causes enumerated in the Local Government Code. Thus, to avoid hiatus in the office of the Chairman, the vacancy should be filled by the members of the Sangguniang Kabataan chosen by the incumbent SK members by simple majority from among themselves.

Other Cases on "Succession"

1. Vice-governor acting as governor cannot continue to preside over sangguniang panlalawigan sessions while acting as such. *(Gamboa v. Aguirre, GR 134213, 07.20.99)*
2. Under Section 444(b)(1)(xiv) of the 1991 Local Government Code, applications for leave of municipal officials and employees appointed by the Mayor shall be acted upon by him/her, not by the Acting Vice-Mayor. *(Civil Service Commission v. Sebastian, GR 161733, 10.11.2005)*
3. In case of vacancy in the Sangguniang Bayan, the nominee of the party under which the member concerned was elected and whose elevation to the higher position created the last vacancy will be appointed. The last vacancy refers to that created by the elevation of the councilor as vice-mayor. The reason behind the rule is to maintain party representation. *(Navarro v. Court of Appeals, GR 141307, 03.28.2001)*
4. *The ranking in the sanggunian shall be determined on basis of the proportion of the votes obtained by each winning candidate to the total number of registered voters. The law does not provide that the number of votes who actually voted must be factored in the ranking.* (Victoria v. Comelec, GR 109005, 01.10.94)
5. The prohibition on midnight appointments only applies to presidential appointments. There is no law that prohibits local elective officials from making appointments during the last days of his/ her tenure. *(De Rama v. Court of Appeals, 353 SCRA 94)*
6. *In accordance with Section 44 of the 1991 Local Government Code, the highest ranking sangguniang barangay member, not the second placer, who should become the punong barangay in case the winning candidate is ineligible.* (Bautista v. Comelec, GR 154796, 10.23.2003; ***Toral Kare v. Comelec, GR 157526/ 157527, 04.28.2004***)

Temporary Vacancies

1. When the governor, city or municipal mayor, or punong barangay is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad and suspension form office, the vice governor, city or municipal vice mayor, or the highest ranking sanggunian barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can be exercised only if the period of temporary incapacity exceeds thirty working days. (Said

temporary incapacity shall terminate upon submission to the appropriate sanggunian of a written declaration that he has reported back to office. In case the temporary incapacity is due to legal causes, the local chief executive concerned shall also submit necessary documents showing that the legal causes no longer exists.)

2. When the local chief executive is travelling within the country but outside this territorial jurisdiction for a period not exceeding three consecutive days, he may designate in writing the officer-in-charge of the said office. Such authorization shall specify the powers and functions that the local official shall exercise in the absence of the local chief executive, except the power to appoint, suspend or dismiss employees. (If the local chief executive fails or refuses to issue such authorization, the vice-governor, city or municipal vice-mayor, or the highest ranking sanggunian barangay member, as the case may be , shall have the right to assume the powers, duties and functions of the said office on the fourth day of absence of the local chief executive, except the power to appoint., suspend or dismiss employees.)

7. Compensation (RA 7160, Section 81)

The compensation of local officials and personnel shall be determined by the sanggunian concerned, subject to the provisions of RA 6758 [Compensation and Position Classification Act of 1989). The elective barangay officials shall be entitled to receive honoraria, allowances and other emoluments as may be provided by law or barangay, municipal or city ordinance, but in no case less than 1,000 per month for the punong barangay and P600.00 for the sanggunian members.

Elective officials shall be entitled to the same leave privileges as those enjoyed by appointive local officials, including the cumulation and commutation thereof.

8. Recall

Recall is the termination of official relationship of an elective official for loss of confidence prior to the expiration of his term through the will of electorate.

1. Initiating the process of recall through the convening of the Preparatory Recall Assembly (PRA) is constitutional. The Constitution empowers Congress to provide effective means of recall. The adoption of the PRA resolution is not the recall itself. *(Garcia v. Comelec, GR 111511, 10.05.93)*
2. Loss of confidence as a ground for recall is a political question. *(Garcia v. Comelec, GR 111511, 10.05.93)*
3. Another resolution by the Preparatory Recall Assembly must be adopted to initiate the recall of a vice-mayor who, before the recall election, became the mayor. *(Afiado v. Comelec, GR 141787, 09.18.2000)*
4. The Preparatory Recall Assembly is distinct from liga ng mga barangay. Barangay officials who participated in recall did so not as members of the liga but as PRA members. *(Malonzo v. Comelec, GR 127066, 03.11.97)*
5. Notice to all members of the Preparatory Recall Assembly is a mandatory requirement. *(Garcia v. Comelec, GR 111511, 10.05.93)*
6. Notice may be served by president of the liga ng mga barangay who is also a member of the Preparatory Recall Assembly. *(Malonzo v. Comelec, GR 127066, 03.11.97)*
7. Service of notice may be effected under any of the modes of service of pleadings – personal, by registered mail. *(Malonzo v. Comelec, GR 127066, 03.11.97)*
8. The 1-year ban (from assumption and next election) refers to the holding of the recall election, not the convening of the PRA. *(Claudio v. Comelec, GR 140560/ 714, 05.04.2000)*
9. The 'regular recall election' mentioned in the 1-year proscription refers to an election where the office held by the local elective official sought to be recalled will be contested and filled by the electorate. *(Paras v. Comelec, GR 123169, 11.04.96; Jariol v. Comelec, GR 127456, 03.20.97)*
10. A party aggrieved by the issuance of Comelec en banc resolution (calendar of activities for recall election) when he/ she had sufficient time, must file a motion for reconsideration with Comelec en banc. *(Jariol v. Comelec, GR 127456, 03.20.97)*

9. Resignation (RA 7160, Section 82)

Resignation of elective local officials shall be deemed effective only upon acceptance by the following authorities:

a) The President, in case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities.
b) The governor, in the case of municipal mayors and vice-mayors, city mayors and vice-mayors of component cities.
c) The sanggunian concerned, in case of sanggunian members.
d) The city or municipal mayor, in the case of barangay officials.

[Note: The resignation shall be deemed accepted if not acted upon by the authority concerned within 15 working days from receipt thereof. Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and

duly entered in its records, except where the sanggunian members are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.]

10. Grievance Procedure (RA 7160, Section 83)

The local chief executive shall establish a procedure to inquire into, act upon, resolve or settle complaints and grievances presented by local government employees.

11. Discipline (RA 7160, Sections 60-68)

Grounds for Disciplinary Action:

An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

1. Disloyalty to the republic of the Philippines.
2. Culpable violation of the Constitution.
3. Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty.
   It was held that acts of lasciviousness cannot be considered misconduct in office, and may not be the basis of an order of suspension. To constitute a ground for disciplinary action, the mayor charged with the offense must be convicted in the criminal action.
4. Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor.
5. Abuse of authority.
   In failing to share with the municipalities concerned the amount paid by the Naitonal Power Corporation for the redemption of the properties acquired by the Province of Albay at a public auction held for delinquent realty taxes, the Provincial Officials were held guilty of abuse of authority. (Salalima v. Guingona, 257 SCRA 55)
6. Unauthorized absence for 15 consecutive working days, except in the case of members of the sangguniang palalawigan, panlungsod, bayan and barangay.
7. Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country.
8. Such other grounds as may be provided in this Code and other laws.

[An elective local official may be removed from office on the grounds enumerated above by order of the proper court.]

Cases on Discipliinary Action (Agra Notes)

1. The power of the President over administrative disciplinary cases against elective local officials is derived from his/ her power of general supervision over local governments. The power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his/ her opinion the good of the public service so requires. Thus: “Independently of any statutory provision authorizing the President to conduct an investigation of the nature involved in this proceeding, and in view of the nature and character of the executive authority with which the President of the Philippines is invested, the constitutional grant to him/ her power to exercise general supervision over all local governments and to take care that the laws be faithfully executed must be construed to authorize him/ her to order an investigation of the act or conduct of the local official.*(Joson v. Torres, GR 131255, 05.20.98)*
2. Jurisdiction over administrative disciplinary actions against elective local officials is lodged in two authorities: the Disciplining Authority and the Investigating Authority. The Disciplinary Authority may constitute a Special Investigating Committee in lieu of the Secretary of the Interior and Local Government. With respect to a provincial governor, the disciplining Authority is the President of the Philippines, whether acting by himself/ herself or through the Executive Secretary. The Secretary of the Interior and Local Government is the Investigating Authority, who may act himself/ herself or constitute and Investigating Committee. The Secretary of the Department, however, is not the exclusive Investigating Authority. In lieu of the Department Secretary, the Disciplining Authority may designate a Special Investigating Committee. The power of the President over administrative disciplinary cases against elective local officials is derived from his/ her power of general supervision over local governments. The power of the Department to investigate administrative complaints is based on the alter-ego principle or the doctrine of qualified political agency. (*Joson v. Torres, GR 131255,05.20.98)*
3. An ‘administrative offense’ means every act or conduct or omission which amounts to, or constitutes, any of the grounds for disciplinary action. (*Salalima v. Guingona, GR 117589-92,05.22.96)*
4. The 1991 Local Government Code is the applicable law insofar as disciplinary action against an elective local official is concerned. The Code prevails over the Administrative Code since the latter is of general application and the former was enacted much later than the latter. *(Calingin v. Court of Appeals, GR 154616, 07.12.2004)*
5. When a mayor is adjudged to be disqualified, a permanent vacancy was created for failure of the elected mayor to

qualify for the office. In such eventuality, the duly elected vice mayor shall succeed as provided by law. The second placer cannot be declared as mayor. *(Toral Kare v. Comelec, GR 157526/ 157527, 04.28.2004)*

6. Any vote cast in favor of a candidate, whose disqualification has already been declared final regardless of the ground, shall be considered stray. The application of this rule is not only limited to disqualification by conviction in a final judgment. Section 40 of the 1991 Local Government Code enumerates other grounds. The disqualification of a candidate is not only by conviction in a final judgment. *(Toral Kare v. Comelec, GR 157526/ 157527, 04.28.2004)*
7. A reelected local official may not be held administratively accountable for misconduct committed during his/ her prior term of office. The re-election of a public official extinguishes only the administrative, but not the criminal, liability incurred during the previous term of office. *(Valencia v. Sandiganbayan, GR 141336, 06.29.2004)* A local official who was re-elected can no longer be charged administratively for misconduct during previous term. *(Garcia v. Mojica, GR 139043, 09.10.99)* An administrative case has become moot and academic as a result of the expiration of term of office of an elective local official during which the act complained of was allegedly committed. Proceedings against respondent are therefore barred by his/ her re-election. *(Malinao v. Reyes, GR 117618, 03.29.96; Reyes v. Comelec, GR 120905, 03.07.96)*
8. Under the 1991 Local Government Code, the disqualification to run for any elective local position is for two years after service of sentence, not 5 years under the Omnibus Election Code since the LGC is the later enactment. *(Magno v. Comelec, GR 147904, 10.04.2002)*

12. Cases on Offenses (Agra Notes)

1. There are no unlawful disbursements of public funds when disbursements are made pursuant to a reenacted budget. Money can be paid out of the local treasury since there is a valid appropriation. There is no undue injury since there was non unlawful expenditure. However, only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted. There is criminal liability in delay in submission of the budget proposal provided the requirements under Section 318 of the Code are not met. The mayor must first receive the necessary financial documents from other city officials in order to be able to prepare the budget. *(Villanueva v. Ople, GR 165125, 11.18.2005)*
2. A mayor who continues to perform the functions of the office despite the fact that he/ she is under preventive suspension usurps the authority of the Office of the Mayor and is liable for violation of Section 13 of the Anti-Graft and Corrupt Practices Act. Section 13 of R.A. No. 3019 covers two types of offenses: (1) any offense involving fraud on the government; and (2) any offense involving public funds or property. The first type involves any fraud whether public funds are involved or not. “Fraud upon government” means “any instance or act of trickery or deceit against the government.” It cannot be read restrictively so as to be equivalent to malversation of funds. Honest belief that he is no longer under preventive suspension cannot serve as defense when he refused to leave his position despite having received the memorandum from the Department of Interior and Local Government and only vacating the office after being forced out by the Philippine National Police. *(Miranda v. Sandiganbayan, GR 154098, 07.27.2005)*
3. By allowing a dismissed employee whose dismissal was affirmed by the Civil Service Commission to continue working and receive his/ her salary, the mayor accorded unwarranted benefits to a party. Therefore he/ she is liable for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act. At the time of the commission of the crime, the municipal mayor, he/ she was mandated to abide by Article I of Section 444(b)(x) of 1991 Local Government Code which directs executive officials and employees of the municipality to faithfully discharge their duties and functions as provided by law. Considering such duty, the mayor had to enforce decisions or final resolutions, orders or rulings of the Civil Service Commission. *(Velasco v. Sandiganbayan, GR160991, 02.28.2005)*
4. Under Section 3(h) of R.A. 3019, the person liable is any public officer who directly or indirectly has financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest. The essential elements of the violation of said provision are as follows: 1) The accused is a public officer; 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; 3) he either: a) intervenes or takes part in his official capacity in connection

with such interest, or b) is prohibited from having such interest by the Constitution or by law. In other words, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.[1] Thus, a mayor violated the aforestated provision via the first mode when he/she intervened in his/her official capacity in connection with his/her financial or pecuniary interest in the transaction regarding the supply and delivery of mixed gravel and sand to the constituent barangays. It was the mayor's company that supplied the materials. *(Domingo v. Sandiganbayan, GR 149175, 10.25.2005)*

5. There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft and Corrupt Practices Act. The first mode is if in connection with his/ her pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his/ her official capacity. The second mode is when he/ she is prohibited from having such interest by the Constitution or any law. A mayor relative to the issuance of a license to operate a cockpit which he/ she owns cannot be held liable under the first mode since he/ she could not have intervened or taken part in his/ her official capacity in the issuance of a cockpit license because he was not a member of the Sangguniang Bayan. Under the 1991 Local Government Code, the grant of a license is a legislative act of the sanggunian. However, the mayor could be liable under the second mode. Further, Section 89 of the 1991 Local Government Code proscribes such pecuniary interest. The penalty must be that one provided under the Code, not under the Anti-Graft Law since the Code specifically refers to interests in cockpits while the latter refers in general to pecuniary interest. *(Teves v. Sandiganbayan, GR 154182, 12.17.2004)*
6. An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his/ her illegal dismissal up to his/ her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left his/ her office and should be given the corresponding compensation at the time of his/ her reinstatement. When there is no malice or bad faith that attended the illegal dismissal and refusal to reinstate on the part of the municipal officials, they cannot be held personally accountable for the back salaries. The municipal government should disburse funds to answer for the claims resulting from dismissal. *(Civil Service Commission v. Gentallan, GR 152833, 05.09.2005)*
7. 'Moral Turpitude' is an act of baseness, vileness, or depravity in the private duties which a person owes his/ her fellow men (and women) or to the society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals. One such act is the crime of fencing. *(Dela Torre v. Comelec GR 121592, 07.05.96)*
8. A local chief executive is not duty-bound to approve and sign a voucher when there is no appropriations ordinance and when there is no certification of availability of funds for the intended purpose. For not signing the voucher, bad faith cannot be imputed against him/ her. (*Llorente v. Sandiganbayan, GR122166, 03.11.98)*
9. When the validity of subsequent appointments to the position of Assistant City Assessor has not been challenged, the city mayor who appointed a person to serve in said position had every right to assume in good faith that the one who held the position prior to the appointments no longer held the same. Thus, the city mayor is not liable for violation of Sections 3(a) and 3(e) of the Anti-Graft and Corrupt Practices Act. Section 3(a) requires a deliberate intent on the part of the public official concerned to violate those rules and regulations duly promulgated by competent authority, or to commit an offense in connection with official duties. On the other hand, Section 3(e) poses the standard of manifest partiality, evident bad faith, or gross inexcusable negligence before liability can be had on that paragraph. Manifest partiality has been characterized as a clear, notorious or plain inclination or predilection to favor one side rather than the other. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may

be affected. *(Reyes v. Atienza, GR 152243, 09.23.2005)*

10. The approval by the Commission on Audit (COA) of disbursements of local funds by a local executive relates to the administrative aspect of the matter of the officials accountability. It does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which he/ she is accountable. Compliance with COA rules and regulations does not necessarily mean that no misappropriation of public funds was committed. Evidence in this regard must still be adduced. (*Aguinaldo v. Sandiganbayan, GR 124471, 11.28.96)*
11. Public officials, more especially an elected one, should not be onion-skinned. Thus, a vice-mayor who beat up a motorist despite the provocation by the latter, is guilty of misconduct. The period where an official was placed under preventive suspension cannot be credited to the penalty imposed on him/ her. (*Yabut v. Office of the Ombudsman, GR 111304, 07.17.94)*
12. A city mayor cannot be held liable under Section 3(g) of the Anti-Graft and Corrupt Practices Act for entering into a contract which is grossly and manifestly disadvantageous to the government when the contract which is subject of the complaint has been rescinded before the report of the Commission on Audit came out and before the complaint was filed with the Ombudsman. (*Duterte v. Sandiganbayan, GR 130191, 04.27.98)*
13. Partial restitution of cash shortage is an implied admission of misappropriation of missing funds by the municipal treasurer in case where he/ she offers no competent and credible evidence to prove that the missing funds were actually cash advances of employees in the municipality. *(Doldol v. People of the Philippines, GR 164481, 09.20.2005)*

13. Cases on Procedure (Agra Notes)

1. An erring elective local officials has rights akin to the constitutional rights of an accused. These are essentially part of procedural due process. The local elective official has the (1) right to appear and defend himself/ herself in person or by counsel; (2) the right to confront and cross-examine the witnesses against him/ her; and (3) the right to compulsory attendance of witness and the production of documentary evidence. Thus, the official's right to a formal investigation was not satisfied when the complaint against him/ her decided on the basis of position papers. The provisions for administrative disciplinary actions elective local officials are markedly different from appointive officials. The rules on the removal and suspension of elective local officials are more stringent. The procedure of requiring position papers in lieu of a hearing in administrative cases is expressly allowed with respect to appointive officials but not to those elected. An elective official, elected by popular vote, is directly responsible to the community that elected him/ her. The official has a definite term of office fixed by law which is relatively of short duration. Suspension and removal from office definitely affects and shortens this term of office. When an elective official is suspended or removed, the people are deprived of the services of the official they had elected. (*Joson v. Torres, GR 131255, 05.20.98)*
2. The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. Procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected. Kinship alone does not establish bias and partiality. Bias and partiality cannot be presumed. In administrative proceedings, no less than substantial proof is required. Mere allegation is not equivalent to proof. Mere suspicion of partiality is not enough. There should be hard evidence to prove it, as well as manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. *(Casimiro v. Tandog, GR 146137, 06.08.2005)*
3. An administrative complaint against an erring elective official must be verified and filed with the proper government office. A complaint against an elective provincial or city must be filed with the Office of the President. A complaint against an elective municipal official must be filed with the Sangguniang

Panlalawigan while that of a barangay official must be filed before the Sangguniang Panlungsod or Sangguniang Bayan. *(Mendoza v. Laxina, GR 146875, 07.14.2003)*

4. The lack of verification in a letter-complaint may be waived, the defect being not fatal. Verification is a formal, not jurisdictional requites. *(Joson v. Torres GR 131255, 05.20.98)*
5. Decisions of the Office of the President are final and executory. No motion for reconsideration is allowed by law but the parties may appeal the decision to the Court of Appeals. The appeal, however, does not stay the execution of the decision. The Secretary of the Interior and Local Government may validly move for its immediate execution. *(Calingin v. Court of Appeals, GR 154616, 07.12.2004)*
6. Direct recourse to the courts without exhausting administrative remedies is not permitted. Thus, a mayor who claims that the imposition of preventive suspension by the governor was unjustified and politically motivated, should seek relief first from the Secretary of the Interior and Local Government, not from the courts. *(Espiritu v. Melgar, GR 100874, 02.13.92)*
7. The 1991 Local Government Code does not preclude the filing of an appeal of a decision of a sangguniang panlungsod involving an elective barangay official. Section 68 of the Code specifically allows a party to appeal to the Office of the President. The decision is immediately executory but the respondent may nevertheless appeal the adverse decision to the Office of the President or to the Sangguniang Panlalawigan, as the case may be. *(Mendoza v. Laxina, GR 146875, 07.14.2003)*
8. Under Section 61 of the 1991 Local Government Code, a complaint against any elective official of a municipality shall be filed before the sangguniang panlalawigan whose decision may be appealed to the Office of the President. When appeal to the Office of the President is available, resort to filing a petition for certiorari, prohibition and mandamus with the Court of Appeals under Rule 65, 14 was inapt. The availability of the right of appeal precludes recourse to the special civil action for certiorari. *(Balindong v. Dacalos, GR 158874, 11.10. 2004)*
9. No notice of the session where a decision of the sanggunian is to be promulgated on the administrative case is required to be given to the petitioner. The deliberation of the sanggunian is an internal matter. In order to render a decision in administrative cases involving elective local officials, the decision of the sanggunian must be writing stating clearly and distinctly the facts and the reasons for the decision. Thus, the voting following the deliberation of the members of the sanggunian did not constitute the decision unless this was embodied in an opinion prepared by one of them and concurred in by the others. Until the members have signed the opinion and the decision is promulgated, they are free to change their votes. *(Malinao v. Reyes, GR 117618, 03.29.96)*
10. The filing of motion for reconsideration before the supervising local government concerning a disciplinary case involving an elective official of the supervised unit prevents the decision of the former from becoming final. Thus, there is thus no decision finding the official guilty to speak of which would disqualify said official. *(Lingating v. Comelec, GR 153475, 11.13.2002)*
11. Under the 1991 Local Government Code, an elective local official must be citizen of the Philippines. One who claims that a local official is not has the burden of proving his/her claim. In administrative cases and petitions for disqualification, the quantum of proof required is substantial evidence. *(Matugas v. Comelec, GR 151944, 01.20.2004)*
12. The Office of the President is authorized to stay the execution of a decision against a municipal mayor issued by the Sangguniang Panalawigan pending appeal. Reviewing officials are not deprived of their authority to order a stay an appealed decision. Supervising officials are given such discretion. (*Berces v. Guingona, 241 SCRA 539*)

14. Complaints

1. A verified complaint against provincial, highly urbanized city or independent component city elective official, shall be filed before the Office of the President.
   a) It may be noted that the Constitution places local governments under the supervision of the Executive. Likewise, the Constitution allows Congress to include in the Local Government Code provisions for removal of local officials, which suggest that Congress may exercise removal powers. So, the Local Government Code has done and delegated its exercise to the President. Note also that legally, supervision is not incompatible with disciplinary authority. (Ganzon v. CA, 200 SCRA 271)
   b) Under Administrative Order No. 23, the President has delegated the power to investigate complaints to the Secretary of

Interior and Local Government. This is valid delegation because what is delegated is only the power to investigate, not the power to discipline. Besides, the power of the Secretary of Interior and Local Government to investigare is based on the *alter ego* principle. (Joson v. Torres, 290 SCRA 279)

c) The respondent has the right to formal investigation under Administrative Order No. 23 which includes the right to appear and defend himself in person or by counsel, the right right to confront the witnesses against him and the right to compulsory process for the attendance of witnesses and the production of documents. Thus, in this case, where the Secretary denied the petitioners motion for a formal investigation and decided the case on the basis of position papers, the right f the petitioner was violated (Joson v. Torres) In *Salalima v. Guingona, 257 SCRA 55,* the SC said that the administrative investigation can proceed even during the pendency of an appeal of audit findings to the Commission on Audit.

2. A verified complaint against elective municipal officials, shall be filed before the sangguinian panlalawigan, whose decision may be appealed to the Office of the President.

a) Administrative Order No. 18 dated February 12, 1987, which provides that on appeal from the decision of the Sangguniang Panlalawigan, the President may stay execution of the appealed decision, was deemed not to have been repealed by RA 7160 did not expressly repeal the administrative order, and implied repeals are frowned upon. (Berces v. Executive Secretary, 241 SCRA 539)

b) The decision of the sanggunian panlalawigan in administrative cases involving elective officials may be in writing stating clearly and distinctly the facts and the reasons for the decision, and must be signed by the requisite majority of the sanggunian. (Malinao v. Reyes, 256 SCRA 616)

3. A valid complaint against elective barangay officials, shall be filed before the sangguniang panglungsod os sagguniang bayan concerned, whose decision shall be final and executor.

15. Preventive Suspension (Agra Notes)

1. **Nature.** Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation.
Purpose. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty. Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. Thus, service of the preventive suspension cannot be credited as service of penalty. *(Quimbo v. Gervacio, GR 155620,08.09.2005)*

2. **Pre-requisites.** A preventive suspension may be imposed by the Disciplinary Authority at any time (a) after the issues are joined i.e. respondent has filed an answer; (b) when the evidence of guilt is strong; and (c) given the gravity of the offenses, there is great probability that the respondent, who continues to hold office, could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. These are the pre-requisites. However, the failure of respondent to file his/ her answer despite several opportunities given him/ her is construed as a waiver of his/ her right to present evidence in his/ her behalf. In this situation, a preventive suspension may be imposed even if an answer has not been filed. (*Joson v. Torres, GR 131255, 05.20.98)*

3. Section 63 of the Local Government Code which provides for a 60 day maximum period for preventive suspension for a single office does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government. The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770 otherwise known as "The Ombudsman Act of 1989". Under the Act, the preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months. *(Miranda v. Sandiganbayan, GR 154098, 07.27.2005)*

4. Under the 1991 Local Government Code, a single preventive suspension of local elective officials should not go beyond 60 days. Thus, the Sandiganbayan cannot preventively suspend a mayor for 90 days. (*Rios v. Sandiganbayan, GR 129913, 09.26.97)*

5. A municipal official placed under preventive suspension by a sangguniang panlalawigan must file a motion for reconsideration before the said sanggunian before filing a petition for certiorari with the Court of Appeals. Such motion is a condition *sine qua non* before filing a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended. *(Flores v. Sangguniang Panlalawigan of Pampanga, GR 159022, 02.23.2005)*

6. There is nothing improper in placing an officer in preventive suspension before charges against him/ her are heard and before he/she is given an opportunity to prove his/her innocence. This is allowed so that such officer may not hamper the normal course of the investigation through the use of his/ her influence and authority. (*Espiritu v. Melgar, GR 100874, 02.13.92)*
7. The Ombudsman pursuant to Republic Act No. 6770 and the President are both authorized to place under preventive suspension erring local officials of highly-urbanized cities, independent cities and provinces. The Ombudsman may impose a longer period of preventive suspension than the President may. In order to justify the preventive suspension of a public official under Section 24 of Republic Act No. 6770, the evidence of guilt should be strong, and (a) the charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges should warrant removal from the service; or (c) the respondent's continued stay in office would prejudice the case filed against him/her. The Ombudsman can impose the 6-month preventive suspension on all public officials, whether elective or appointive, who are under investigation. On the other hand, in imposing the shorter period of sixty (60) days of preventive suspension under the 1991 Local Government Code on an elective local official (at any time after the issues are joined), it would be enough that (a) there is reasonable ground to believe that the respondent has committed that act or acts complained of, (b) the evidence of culpability is strong, (c) the gravity of the offense so warrants, or (d) the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. (*Hagad v. Gozo-dadole, GR 108072, 12.12.95)*

Who may impose preventive suspension. Preventive suspension may be imposed by the President, the governor, or the mayor [as the case may be] at any tome after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; provided that any single preventive suspension shall not extend beyond 60 days, and in the event several administrative cases are filed against the respondent, he cannot be suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of the first suspension.

1. The authority to preventively suspend is exercised concurrently by the Ombudsman, pursuant to RA 6770; the same law authorizes a preventive suspension of six months. (Hagad v. Gozo-Dadole, 1995)
   The preventive suspension of an elective local official (in this case the Mayor of San Fernando, Romblon) by the Sandignabayan on a charge of violation of RA 3019, shall likewise be only for a period of 60 days, not 90 days, consistent with Section 63, RA 7160, which provides that "any single preventive suspension of local elective officials shall not extend beyond 60 days." (Rios v. Sandiganbayan, 1997)
2. Upon expiration of the preventive suspension, the respondent shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within 120 days from the time he was formally notified of the case against him.
3. Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

16. Penalty (Agra Notes)

1. Under Section 60 of the 1991 Local Government Code, the penalty of dismissal from service upon an erring local official may be declared only by a court of law. Thus, Article 124(b), Rule XIX of the Rules and Regulations Implementing the Local Government Code, which grants the disciplinary authority the power to remove elective local officials, is a nullity. *(Pablico v. Villapando, GR 147870, 07.31.2002)*
2. A sanggunian panlalawigan may cause the removal of a municipal mayor who did not appeal to the Office of the President within the reglemantary period the decision removal him/ her from office. If a public official is not removed before his/ her term of office expires, he/ she can no longer be removed if he/she thereafter re-elected for another term. Therefore, a decision removing an elective local official, which has become final before the election, constitutes a disqualification. *(Reyes v. Comelec, GR 120905, 03.07.96)*
3. The President may suspend an erring provincial elected official who committed several administrative offenses for an aggregate period exceeding 6 months provided that each administrative offense, the period of suspension does not exceed the 6-month limit. *(Salalima v. Guingona, GR 117589-92, 05.22.96)*
4. Dishonesty, oppression, misconduct in office, gross negligence, or an offense punishable

by at least *prison mayor* constitute grounds for removal upon order of the proper court. (*Castillo-Co v. Barbers GR 129952, 06.16.98)*

The penalty of suspension imposed upon the respondent shall not exceed his unexpired term, or a period of 6 months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent as long as he meets the qualifications required for the office.

1. In *Pablico v. Villapando, 2002,* it was held that by virtue of Section 60 of the LGC, which provides that "an elective local official may be removed from office on grounds enumerated above by order of the proper court," the penalty of dismissal form the service may be imposed upon an erring local elective official only by a court of law. The provision of the Implementing Rules and Regulations granting the disciplining authority the power to remove an elective local official administratively are invalid.
2. Note that under Section 40 of the Local Government Code, the penalty of removal form office as a result of an administrative case shall be a bar to the candidacy of the respondent for any elective local office.
3. In *Salalima v. Guingona, 257 SCRA 55,* the SC upheld the imposition of the administrative penalty of suspension of not more than 6 months for each offense, provided that the successive serves of the sentence should not exceed the unexpired portion of the term of the petitioners. The suspension did not amount to removal from office.

17. Administrative Appeal

Decision may, within 30 days from receipt thereof, be appealed to:

1. The sangguniang panlalawigan, in the case of decision of component cities' sangguniang panlungsod and sangguniang bayan;
2. The Office of the President, in the case of decision of the sangguniang panlalawigan and the sangguniang panglungsod of highly urbanized cities and independent component cities. Decision of the Office of the President shall be final and executory.
   a) In *Malinao v. Reyes, 255 SCRA 616,* the SC ruled that certiorari will not lie because there is still adequate remedy available in the ordinary course of law, i.e., appeal of the decision of the Sangguniang Panlalawigan to the Office of the President.
   b) That there is appeal to the Office of the President is reiterated in *Mendoza v. Laxina, 2003,* although in this case, because the issue raised was purely legal, resort to court was upheld. The phrases, "final and executory" and "final or executory" in Sections 67 and 68 of the Local Government Code, simply mean that administrative appeal will not prevent the enforcement of the decision. While the administrative decision is immediately executory, the local elective official may nevertheless appeal the adverse decision to the Office of the President or the Sanggunian Panlalawigan, as the case may be. After all, if exonerated on appeal, he will be paid his salary an such other emoluments denied him during the pendency of the appeal.

18. Execution Pending Appeal

An appeal shall not prevent a decision from being executed; the respondent shall be considered as having been placed under preventive suspension during the pendency of the appeal. But in *Berces v. Executive Secretary, 241 SCRA 530,* the SC pointed out the Administrative Order No. 18 authorizes the Office of the President to stay the execution of a decision pending appeal. Administrative Order No. 18 was not repealed by the Local government Code.

19. Jurisdiction of Sandiganbayan

1. For an offense to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur:
   (1) the offense committed is a violation of
   (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act),
   (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery),
   (d) Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986 (sequestration cases), or
   (e) other offenses or felonies whether simple or complexed with other crimes;
   (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph A of Section 4; and
   (3) the offense committed is in relation to the office.
   Thus, for the Sandiganbayan to have exclusive jurisdiction, it is essential that the facts showing the intimate relation between the office of the offender, a mayor who holds a salary grade level 27, and the discharge of official duties be alleged in the information.
   The jurisdiction of a court is determined by the allegations in the complaint or information, and not by the evidence presented by the parties at the trial. It does not thus suffice to merely allege in the information that the crime charged was committed by the offender in relation to his office or that he took advantage of his position as these are conclusions of law. The specific factual allegations in the information that would indicate the close intimacy

between the discharge of the offender's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office are controlling. *(Adaza v. Sandiganbayan, GR 154886, 07.28.2005)*

2. For purposes of acquisition of jurisdiction by the Sandiganbayan, the requirement imposed by Republic Act No. 8249 that the offense be "committed in relation" to the offender's office is entirely distinct from the concept of "taking advantage of one's position" as provided under Articles 171 *(Falsification by public officer, employee or notary or ecclesiastic minister)* and 172 *(Falsification by private individuals and use of falsified documents)* of the Revised Penal Code. The offender under Article 172 must be a private individual or maybe a public officer, employee or notary public who does not "take advantage of his official position." Under Article 171, an essential element of the crime is that the act of falsification must be committed by a public officer, employee or notary who "takes advantage of his official position." The offender "takes advantage of his official position" in falsifying a document when:
(1) he has the duty to make or to prepare or otherwise intervene in the preparation of the document; or
(2) he has the official custody of the document which he falsifies. *(Adaza v. Sandiganbayan, GR 154886, 07.28.2005)*

3. For purposes of vesting jurisdiction with the Sandiganbayan, the local elective official who holds a position of Grade 27 under the Local Government Code of 1991 must have committed the offense charged in relation to the office. For an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, in that in the legal sense, the offense can not exist without the office. As an exception to this rule, the Court held that although public office is not an element of an offense charged, as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his/ her official functions, there being no personal motive to commit the crime and had the accused would not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office. However, even if public office is not an essential element of the offense of obstruction of justice under Section 1(b) of P.D. 1829 but could have been committed had said mayor not held the office of the mayor, said official is subject to the jurisdiction of the Sandiganbayan. The mayor in the course of his/ her duty as Mayor, who is tasked to exercise general and operational control and supervision over the local police forces, used his/ her influence, authority and office to call and command members of the municipal police. (*Rodriguez v. Sandiganbayan, GR 141710, 03.03.2004)*

4. The Sandiganbayan has original jurisdiction over a member of the Sangguniang Panlungsod, who was charged with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Violation of Republic Act No. 3019 committed by officials in the executive branch with Salary Grade 27 or higher, and the officials specifically enumerated in (a) to (g) of Section 4 a.(1) of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, regardless of their salary grades, such as provincial and city elective officials, likewise fall within the original jurisdiction of the Sandiganbayan. *(Inding v. Sandiganbayan, GR 143047, 07.14.2004)*

20. Effect of Re-election

The re-election of a local official bars the continuation of the administrative case against him, inasmuch as the re-election of the official is tantamount to condonation by the people of whatever past misdeeds he may have committed. (Malinao v. Reyes, 255 SCRA 616)

In *Lingating v. Comelec, 2002,* the respondent Mayor, having been found guilty of the administrative charges and ordered removed from office, had seasonably filed a motion for reconsideration with the Sanggunian Panlalawigan, and no action on his motion was taken, then the decision of the Sanggunian Panlalawigan never became final. After the respondent was re-elected, he may no longer be removed from office for the administrative offense.

D. Appointive Local Officials

1. Responsibility for human resources and development

The local chief executive shall be responsible for human resources and development in his unit and shall take all personnel actions in accordance with the Constitution, pertinent laws, including such policies, guidelines and standards as the Civil Service Commission may establish; Provided that the local chief executive may employ emergency or casual employees or laborer paid on a daily wage or piecework basis and hired through job orders for local projects authorized by the sanggunian concerned, without need of approval or attestation by the Civil Service Commission, as long as the said employment shall not exceed 6 months.

a) In *De Rama v. CA, 2001,* it was held that the constitutional prohibition on so-called midnight appointments specifically those made within

two months immediately prior to the next presidential elections, applies only to the President or to Acting President. There is no law that prohibits local elective officials from making appointments during the last days of their tenure absent fraud on their part, when such appointments are not tainted by irregularities or anomalies which breach laws and regulations governing appointments.

b) The Provincial Governor is without authority to designate the petitioner as Assistant Provincial Treasurers from a list of recommendees of the Provincial Governor. (Dimaandal v. COA, 291 SCRA 322)

2. Officials common to all Municipalities, Cities and Provinces (RA 7160, Section 469-490)

1. Secretary to the Sanggunian
2. Treasurer
3. Assessor
4. Accountant
5. Budget Officer
6. Planning and Development Coordinator
7. Engineer
8. Health Officer
9. Civil Registrar
10. Administrator
11. Legal Officer
12. Agriculturist
13. Social Welfare and Development Officer
14. Environment and Natural Resources Officer
15. Architect
16. Information Officer
17. Cooperatives Officer
18. Population Officer
19. Veterinarian
20. General Services Officer

[Note: In the barangay, the mandated appointed officials are the Barangay Secretary and the Barangay Treasurer, although other officials of the barangay may be appointed by the punong barangay.]

3. Administrative Discipline

Investigation and adjudication of administrative complaints against appointive local officials and employees as well as their suspension and removal shall be in accordance with the civil service law and rules and other pertinent laws.

a) Preventive Suspension. The local chief executive may preventively suspend for a period not exceeding 60 days any subordinate official or employee under his authority pending investigation if the charge against such official or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, or if there is reason to believe that the respondent is guilty of the charges which would warrant his removal from the service.

b) Disciplinary Jurisdiction. Except as otherwise provided by law, the local chief executive may impose the penalty of removal from service, demotion in rank, suspension for not more than 1 year without pay, fine in an amount not exceeding 6 months' salary, or reprimand. If the penalty imposed is suspension without pay for not more than 30 days, his decision shall be final; if the penalty imposed is heavier, the decision shall be appealable to the CSC which shall decide the appeal within 30 days from receipt thereof.

However, it is not the City Mayor, but the City Treasurer who exercises disciplinary authority over a City Revenue Officer. As head of the Office of the Treasurer, and Revenue Officer being an officer under him, the former may validly investigate the said Revenue Officer and place him under preventive suspension. (Garcia v. Pajaro, 2002)

VII. Autonomous Regions

NOTE: As of this writing, only one autonomous region, that of Muslim Mindanao, has been established. (The Organic Act for the autonomous region of the Cordilleras failed to obtain the necessary number of votes because only one province approved the Organic Act. An autonomous region must have at least two provinces. It is however, still possible for an Organic Act for the Cordilleras to be approved at some future date.)

Article X Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

A. Reasons Behind the Creation of Autonomous Regions

1. The creation of a situation which will allow each culture to flourish unhampered by the dominance of other cultures and thereby to contribute more effectively to national progress.

2. To furnish possible solution to the regional conflicts that have arisen partly from cultural diversity.[677]

[677] Bernas Primer at 433 (2006 ed.)

Q: Is an autonomous region an independent nation within the nation?

A: No, an autonomous region is organized "within the framework of this Constitution and the national sovereignty."[678]

B. President's General Supervision

Section 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

C. Powers Not Given to Autonomous Regions

Section 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Some of the powers which are NOT given to autonomous regions:

1. Jurisdiction over national defense and security;
2. Foreign relations and foreign trade;
3. Customs and tariff, quarantine
4. Currency, monetary affairs, foreign exchange, banking and quasi-banking, external borrowing;
5. Posts and communications;
6. Air and sea transport
7. Immigration and deportation;
8. Citizenship and naturalization;
9. General auditing.

D. Enactment of Organic Acts; Creation of Autonomous Region

Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

1. Enactment of Organic Acts

As preliminary step towards the establishment of the autonomous regions, Congress is commanded to formulate an Organic Act for each of the two. The Constitution commands the Congress to enact an Organic Act which will be the fundamental law of the regions.

Q: What law will be the charter of the autonomous regions?

A: Their charter will be the ***Organic Act*** which will be passed by Congress in the manner and according to the substantive specifications contained in Section 18.

Q: If the first Congress fails to pass the Organic Act within 18 months, will it no longer be able to pass such Act later?

A: Yes. The failure of Congress to act cannot be allowed to frustrate the clear intent of the electorate. The relatively short period is prescribed in order to emphasize the urgency of creating autonomous regions.

[678] Bernas Primer at 434 (2006 ed.)

Q: The legality of RA 6734, the Organic Act of Mindanao, is challenged and the plebiscite called in 13 provinces of Mindanao for the ratification of the Organic Act is challenged for being illegal in that aspects of the Organic Act violate the Tripoli Agreement which is a valid international agreement. Decide.

A: Even if the Tripoli Agreement were an international agreement, the fact would not affect the validity of the Organic Act. International agreements as internal law are on the same legal level as statutes and whichever as between the two, international agreement or statute, comes later supersedes the other. (Abbas v. Comelec, 1989)

Nature of Organic Act. The Organic Act itself in legal category is a statute. However, it is more than an ordinary statute because it enjoys affirmation by a plebiscite. Hence, its provision cannot be amended by ordinary statute. (Pandi v. CA, 2002)

2. Creation of Autonomous Region

The enactment of the Organic Act does not yet create the autonomous region**.** The creation of the autonomous regions takes place only **when the *Organic Act is ratified*** "by a majority of the votes cast by the constituent units in a plebiscite called for the purpose."

Q:For the effective creation of the automous region is it required that the total votes cast in all the units where the plebiscite is called must yield a majority of affirmative votes?

A: No. It is enough for the creation of the autonomous region that some "provinces, cities, and geographic areas" vote favorably. In other words, as an examination of the constitutional text shows, for effective ratification it is not necessary to achieve a "double majority." (Abbas v. Comelec, 1989)

What areas become part of the Autonomous Region? Only those areas which vote in favor of the Organic Act. And since the Constitution speaks of "provinces," an autonomous region has to consist of more than one province.

Q: What happens to the political subdivisions which do not vote favorably?

A: They remain in the administrative region to which they belong. (Abbas v. Comelec, 1989)

Q: Can constituent units which vote negatively in the first plebiscite under this Constitution join the autonomous region at some future time?

A: It is submitted that they may through a subsequent plebiscite.[679]

Q: May the Province of Ifugao, which was the only province which voted for a Cordillera Autonomous Region, constitute the Cordillera Autonomous Region?

A: No, the Constitution says that an autonomous region shall consists of provinces, cities and municipalities, and therefore, not just on province. (Ordillo v. Comelec, 1990)

Q: Can a tribal court of the Cordillera Bodong Administration render a valid executor decision in a land dispute?

A: No. In the January 30, 1990 plebiscite, the creation of the Cordillera Autonomous Region was rejected by all the provinces and city of Cordillera region except Ifugao province, hence the Cordillera Autonomous Region did not come to be. Hence, no autonomous region was created. As a logical consequence of that, the Cordillera Bodong Administration created under EO 220 as well as the indigenous and special courts for the indigenous cultural communities of the Cordillera region do not exist. "Such tribal courts are not a part of the Philippine Judicial system. They do not posses judicial power. Like the *pangkats* or conciliation panels created by PD 1508 in the barangays, they are advisory and conciliatory bodies whose principal objective is to bring together parties to a dispute and persuade them to make peace, settle, and compromise" (Spouses Badua v. Cordillera Bodong Administration, 1991)

D. Enumerated Powers of Autonomous Region

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

[679] Bernas Primer at 436 (2006 ed.)

(1) Administrative organization;
(2) Creation of sources of revenues;
(3) Ancestral domain and natural resources;
(4) Personal, family, and property relations;
(5) Regional urban and rural planning development;
(6) Economic, social, and tourism development;
(7) Educational policies;
(8) Preservation and development of the cultural heritage; and
(9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Q: Legislation passed by the autonomous regions can come into conflict with the Constitution. How are such conflicts to be resolved?
A: The Constitution should always prevail. (For instance, the full gamut of religious freedom must be recognized even in an area where a principal basis for the autonomy is religious homogeneity.)

Q: Legislation passed by the autonomous regions can come into conflict with national laws. How are such conflicts to be resolved?
A: There is no easy answer as to which would prevail. The matter necessitates the serious weighing of the values. It may even involve adjustment of national laws in order to accommodate the constitutional desire for local autonomy in its various aspects. (And indeed conflict will almost naturally have to be expected because national laws are generally a reflection of the nationally predominant culture. But, although Section 20 says that local legislative power should be subject to national laws, national laws themselves are subject to the Constitution one of those state policies is to ensure the autonomy of local governments.)
Conflicts can also arise in the application of local laws. This can be particularly crucial in the case of personal and property laws for those belonging to autonomous regions but acting outside the autonomous territory and also for those who do not belong to autonomous regions but are acting within autonomous territory. Thus, conflict of law principles could develop could develop within our one national municipal law.

Q: Is the enumeration in Section 20 exhaustive of what the Organic Act may give to the autonomous regions?
A: No. See Section 17. The enumeration in Section 20 is intended as a political signal that indeed the Constitution takes the matter of regional autonomy seriously.

E. Peace and Order, Defense and National Security

Section 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

Section 21 makes a distinction between the problem of internal peace and order and the problem of national defense and security. The former, understood as the problem of ordinary criminality which should normally be the concern of police authorities, is the responsibility of the local police agencies.

However, the organization, maintenance, and supervision of police agencies may in certain circumstances be beyond the capabilities of local governments. In such instances, the President, as Commander-in-Chief may order the armed forces into the autonomous region to perform whatever may be necessary.

As to national defense and security, that is, as to dealing with threats to the stability, integrity, and survival of the nation, this clearly is the primary responsibility of the national government.

VIII. Inter-Governmental Relations[680]

A. National Government

1. Power of General Supervision

The President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions. The President shall exercise supervisory authority directly over provinces, highly urbanized cities and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to the barangays.

2. Enactment of Organic Acts

National agencies and offices with project implementation functions shall coordinate with one another and with the local government units concerned in the discharge of these functions. They shall ensure the participation of local government units both in the planning and the implementation of said national projects.

3. Enactment of Organic Acts

No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 are complied with, and prior approval of the sanggunian concerned is obtained; Provided, that occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided.

B. Philippine National Police

The extent of operational supervision and control of local chief executives over the police force, fire protection unit and jail management personnel assigned in their respective jurisdictions shall be governed by the provisions of RA 6975, otherwise known as the "DILG Act of 1990."

C. Inter-governmental Relations

[680] Antonio Nachura, Outline on Political Law, 603 (2006)

1. The province, through the governor, shall ensure that every component city and municipality within its territorial jurisdiction acts within the scope of its prescribed powers and functions. Highly urbanized cities and independent component cities shall be independent of the province.

   Except as otherwise provided under the Constitution and special statutes, the governor shall review all executive orders promulgated by the component city or municipal mayor within his jurisdiction. The city or municipal mayor shall review all executive orders promulgated by the punong barangay within his jurisdiction. If the governor or the city or municipal mayor fails to act on said executive orders within 30 days from submission, the same shall be deemed consistent with law and therefore valid.
2. In the absence of the legal officer, the municipal government may secure the opinion of the provincial legal officer, and in the absence of the latter, that of the provincial prosecutor on any legal question affecting the municipality.
3. The city or municipality, through the city or municipal mayor, shall exercise general supervision over component barangays to ensure that said barangays acts within the scope of their prescribed powers and functions.
4. Local government units may, through appropriate ordinances, group themselves, consolidate or coordinate their efforts, services and resources for purposes commonly beneficial to them. In support of such undertakings, the local government units may, upon approval by the sanggunian after a public hearing conducted for the purpose, contribute funds, real estate, equipment, and other kinds of property and appoint or assign personnel under such terms and conditions as may be agreed upon by th participating local units.

D. People's and Non-Governmental Organizations

1. Local government units shall promote the establishment and operation or people's and non-governmental organizations to become active partners in the pursuit of local autonomy.
2. Local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery o certain basic services, etc.
3. A local government unit may, through its local chief executive and with the concurrence of the sanggunian concerned, provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental or cultural projects to be implemented within its territorial jurisdiction.

E. Mandated Local Agencies

1. The Local School Board (Sections 98-101)

   The SC held that the Special Education Fund (SEF) may be used for the payment of salaries and personnel-related benefits of the teachers appointed by the province in connection with the establishment and maintenance of extension classes and operation and maintenance of public schools. However, the fund may not be used to defray expenses for college scholarship grants. The grant of government scholarship to poor but deserving students was omitted in Sections 100(c) and 272 of the Local Government. (COA of Cebu v. Province of Cebu, 2001)
2. The Local Health Board (Section 102-105)
3. The Local Development Council (Sections 106-115)
4. The Local Peace and Order Council (Section 116)

F. Settlement of Boundary Disputes

1. Boundary disputes between and among local government units shall, as much as possible, be settled amicably.

   The rules on settlement of disputes are:

   a) Involving two or more barangays in the same city or municipality: referred to the sangguniang panlungsod or sagguniang bayan.
   b) Involving two or more municipalities in the same province: referred to the sanggunian panlalawigan.

      The SC declared that the RTC was correct when it ordered a relocation survey to determine to which municipality the barangay belonged. The agreement between the municipalities of Jimenez and Sinacaban which was approved by the Sanggunian Panlalawigan is invalid as it would effectively amend EO 258 (creating the municipality of Sinacaban). The power of the Sangguniang Panlalawigan to settle boundary disputes is limited to implementing the law creating the municipality; and any alteration of boundaries not in accordance with the law would exceed this authority.
   c) Involving municipalities or component cities in different provinces: jointly referred to the sanggunians of the provinces concerned.
   d) Involving a component city or municipality on one hand and a highly urbanized city on the other, or two or more highly urbanized cities: jointly referred to the respective sanggunians of the parties.
2. In the event the sanggunian fails to effect a settlement within 60 days from the date the dispute was referred to it, it shall issue a certification to this effect. The dispute shall then be formally tried by the sanggunian

concerned which shall decide the issue within 60 days from the date of certification.

3. Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper RTC having jurisdiction over the area in dispute which shall decide the appeal within 1 year form the filing thereof.

   Inasmuch as Section 118 of the Local Government Code does not provide for the office or the agency vested with the jurisdiction over the settlement of boundary disputes between a municipality and an independent component city in the same province, under BP 129, as amended by RA 7691, it should be the RTC in the province that can adjudicate the controversy. After all, RTC has general jurisdiction to adjudicate all controversies, except only those withheld from its plenary powers. (Municipality of Kananga v. Madrona, 2003)

4. The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of the local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of government power which ultimately will prejudice the people's welfare. (Mariano v. Comelec)

BAR QUESTION (2005): Boundary Dispute Resolution; LGU; RTC's Jurisdiction –
Q:There was a boundary dispute between Duenas, a municipality, and Passi, an independent component city, both of the same province. State how the two local government units should settle their boundary dispute. (5%)
Suggested Answer: Boundary disputes between local government units should, as much as possible, be settled amicably. After efforts at settlement fail, then the dispute may be brought to the appropriate Regional Trial Court in the said province. Since the Local Government Code is silent as to what body has exclusive jurisdiction over the settlement of boundary disputes between a municipality and an independent component city of the same province, the Regional Trial Courts have general jurisdiction to adjudicate the said controversy. (Mun. of Kananga v. Madrona, G.R. No. 141375, April 30, 2003)

IX. Local Initiative and Referendum

A. Local Initiative

1. Definition of Local Initiative

It is the legal process whereby the registered voters of a local government unit may directly propose, enact or amend any ordinance. It may be exercised by all registered votes or the provinces, cities, municipalities and barangays.

2. Procedure

a) Not less than 2,000 registered voters in the region: 1,000 registered voters in case of provinces and cities; 100 voters in case of municipalities, and 50 in case of barangays, may file a petition with the sanggunian concerned proposing the adoption, enactment, repeal or amendment of an ordinance. 9RA 6735, Section 13)
b) If no favorable action is taken by the sanggunian concerned within 30 days form presentation, the proponents, through their duty authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the sanggunian concerned.
c) The prposition shall be numbered serially, starting from numeral I. Two or more propositions may be submitted in an initiative. The Comelec or its designated representative shall extend assistance in the formulation of the proposition.
d) Proponents shall have 90 days [in case of provinces and cities], 60 days [in case of municipalities], and 30 days [in case of barangays] from notice mentioned in (b) to collect the required number of signatures.
e) The petition shall be signed before the election registrar or his designated representative, and in the presence of a representative of the proponent and a representative of the sanggunian concerned in a public placein the local government unit.
f) Upon the lapse of the period, the Comelec shall certify as to whether or not the required number of signatures has been obtained. Failure to obtain the required number of signatures defeats the proposition.
g) If the required number is obtained, the Comelec shall set a date for the initiative during which the proposition is submitted to the registered voters in the local government unit for their approval within 60 days [in case of provinces], 45 days [in case of municipalities], and 30 days [in case of barangays] from the date of certification by the Comelec. The initiative shall be held on the date set, after which the results thereof shall be certified and proclaimed by the Comelec.
h) If the proposition is approved by a majority of the votes cast, it shall take effect 15 days after certification by the Comelec as if affirmative action had been taken thereon by the

sangguninan and local chief executive concerned.

3. Limitations

On Local Initiative:

i. The power of local initiative shall not be exercised more than once a year.

ii. Initiative shall extend only to subjects or matters which are within the legal powers of the sanggunian to enact.

iii. If at any time before the initiative is held, the sanggunian concerned adopts in toto the proposition presented and the local chief executive approves the same, the initiative shall be cancelled. However, those against such action may, if they so desire, apply for initiative in the manner herein provided.

On the Sanggunian

Any proposition or ordinance approved through an initiative and referendum shall not be repealed, modified or amended by the sanggunian within 6 months from the date of approval thereof, and may be amended, modified or repealed within 3 years thereafter by a vote of ¾ of all its members. In case of barangays, the period shall be 18 months after the approval thereof.

B. Local Referendum

1. **Definition of Local Referendum.** The legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the sanggunian.
2. The local referendum shall be held under the control and direction of the Comelec within 60 days [in case of provinces], 45 days [in case of municipalities] and 30 days [in case of barangays]. The Comelec shall certify and proclaim the results of the said referendum.

C. Authority of Courts

Nothing in the foregoing shall preclude the proper courts from declaring null and void any proposition approved pursuant hereto for violation of the Constitution or want of capacity of the sanggunian concerned to enact said measure.

(Read Case Digests in Pages 452-502 of Jack's Compendium (2006))

Article XI
ACCOUNTABILITY OF PUBLIC OFFICERS

I. STATEMENT OF POLICY (Section 1)
II. IMPEACHMENT (Sections 2 & 3)
III. SANDIGANBAYAN (Section 4)
IV. OMBUDSMAN (Section 5,6,8-14)
V. SPECIAL PROSECUTOR (Section 7)
VI. ILL-GOTTEN WEALTH (Section 15)
VII. RESTRICTION ON LOANS(Section 16)
VIII.TRANSPARENCY RULE (Section 17)
IX. ALLEGIANCE TO THE STATE AND THE CONSTITUTION (Section 18)

I. Statement of Policy

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

A. Public Office

1. Definition

The right, authority or duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some sovereign power of government to be exercised by him for the benefit of the public. (Fernandez v. Sto. Tomas, 1995)

2. Elements

1. Created by law or by authority of law;
2. Possess a delegation of a portion of the sovereign powers of government, to be exercised for the benefit of the public;
3. Powers conferred and duties imposed must be defined, directly or impliedly, by the legislature or by legislative authority;
4. Duties must be performed independently and without the control of a superior power other than the law, unless they be those of an inferior or subordinate office created or authorized by the legislature, and by it placed under the general control of a superior office or body; and
5. Must have permanence of continuity.[681]

3. Creation

Public officers are created:

a. By the Constitution
b. By valid statutory enactments (e.g. Office of the Insurance Commissioner)
c. By authority of law (e.g. Davide Commission)[682]

B. Public Officer

A person who holds a public office.[683]

C. Public Office as Public Trust

Q: What is meant by "public office is a public trust"?
A: The basic idea of government in the Philippines is that of a representative government the officers being mere agents and not rulers of the people… where every officer accepts office pursuant to the provisions of law and holds the office as a trust for the people whom he represents. (Justice Malcom in Cornejo v. Gabriel, 41 Phil 188, 1920)[684]

Q: What does the command to lead modest lives entail?
A: Even if the public officer is independently wealthy, he should not live in a manner that flaunts wealth. [685]

II. Impeachment

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

[681] Antonio Nachura, Outline on Political Law, 423 (2006)

[682] Antonio Nachura, Outline on Political Law, 423 (2006)
[683] Antonio Nachura, Outline on Political Law, 423 (2006)
[684] Bernas Primer at 440 (2006 ed.)
[685] Bernas Primer at 440 (2006 ed.)

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

A. Definition of Impeachment

A national inquest into the conduct of public men.[686]

B. Purpose of Impeachment

The purpose of impeachment is not to punish but only to remove an officer who does not deserve to hold office.[687]

C. Impeachable Officers

1. President
2. Vice-President
3. Chief Justice and Associate Justice of the Supreme Court
4. Chairmen and members of the Constitutional Commissions
5. Ombudsman

Note: The list of officers subject to impeachment in Section 2 as worded is exclusive.

Members of the Supreme Court

The Supreme Court said that the Special Prosecutor cannot conduct an investigation into alleged misconduct of a Supreme Court justice, with the end view of filing a criminal information against him with the Sandiganbayan. A Supreme Court Justice cannot be charged in a criminal case or a disbarment proceeding, because the ultimate effect of either is to remove him from office, and thus circumvent the provision on removal by impeachment thus violating his security of tenure (In Re: First Indorsement from Hon. Raul Gonzalez, A.M. No. 88-4-5433)

An impeachable officer who is a member of the Philippine bar cannot be disbarred first without being impeached. (Jarque v. Desierto, 250 SCRA 11)[688]

C. Grounds

1. Culpable Violation of the Constitution
2. Treason, Bribery and Graft and Corruption
3. Other High Crimes or
4. Betrayal of Public Trust

Note: The enumeration is exclusive.

Culpable Violation of the Constitution

Culpable violation of the Constitution is wrongful, intentional or willful disregard or flouting of the fundamental law. Obviously, the act must be deliberate and motivated by bad faith to constitute a ground for impeachment. Mere mistakes in the proper construction of the Constitution, on which students of law may sincerely differ, cannot be considered a valid ground for impeachment.[689]

Treason

Treason is committed by any person who, owing allegiance to the Government of the Philippines, levies war against it or adheres to its enemies, giving them aid and comfort. (RPC, Article 114)

Bribery

Bribery is committed by any public officer who shall agree to perform an ac, whether or not constituting crime, or refrain from doing an act which he is officially required to do in connection with the performance of his official duties, in consideration for any offer, promise, gift or present received by him personally or through the mediation of another, or who shall accept gifts offered to him by reason of his office. 9RPC, Arts. 210-211)

Other High Crimes

According to the special committee of the House of Representatives that investigated the impeachment charges against President Quirino, are supposed to refer to those offenses "which, like treason and bribery, are of so serious and enormous a nature as to strike at the very life or the orderly workings of the government." This rather ambiguous definition, assuming it is correct, would probably exclude such offenses as rape and murder which, although as serious as treason and bribery, will not necessarily strike at the orderly workings, let alone life of the government.[690]

Graft and Corruption

[686] Antonio Nachura, Outline on Political Law, 345 (2006)

[687] Bernas Primer at 442 (2006 ed.)

[688] Antonio Nachura, Outline on Political Law, 345 (2006)

[689] Cruz, Philippine Political Law, p.335

[690] Cruz, Philippine Political Law, p.335

Graft and corruption is to be understood in the light of the prohibited acts enumerated in the Anti-Grant and Corrupt Practices Act, which was in force at the time of the adoption of the Constitution.[691]

Betrayal of Public Trust

The 1987 Constitution has added "betrayal of public trust," which means any form of violation of the oath of office even if such violation may not be criminally punishable offense.[692]

This is a catch-all to cover all manner of offenses unbecoming a public functionary but not punishable by the criminal statutes, like "inexcusable negligence of duty, tyrannical abuse of authority, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, obstruction of justice.[693]

D. Procedure

Congress shall promulgate its rules on impeachment to effectively carry out the purpose. (Section 3(8))

1. Initiation

The proceeding is initiated or begins, ***when a verified complaint (with accompanying resolution or indorsement) is filed and referred to the Committee on Justice for action***. This is the initiating step which triggers the series of steps that follow. (Fransisco v. House Speaker, 2003)

2. Limitation on initiating of impeachment case

The Constitution prohibits the initiation of more than one "impeachment proceeding" within one year.

> In *Fransico v. House of Representatives,* the SC said that considering that the first impeachment complaint was filed by former President Estrada against Chief Justice Davide along with seven associate justices on June 02, 2003 and referred to the House Committee on Justice on August 05, 2003, the second impeachment complaint filed by some Rep. Teodoro et. al., against the Chief Justice on October 23, 2003, violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within a one-year period.

3. Trial

The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. A decision of conviction must be concurred in by at least two-thirds of all the members of the Senate.

4. Penalty

The penalty which may be imposed "shall not extend further than removal from office and disqualification to hold any office under the Republic."[694]

This penalty is beyond the reach of the President's power of executive clemency, but does not place the officer beyond liability to criminal prosecution. (When criminally prosecuted, therefore, for the offense which warranted his conviction on impeachment, the officer cannot plead the defense of double jeopardy.)[695]

5. Effect of Conviction

Removal from office and disqualification to hold any office under the Republic of the Philippines. But the party convicted shall be liable and subject to prosecution, trial and punishment according to law.

6. Judicial Review

III. Sandiganbayan

Section 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

A. Composition of Sandiganbayan

Under PD 1606, it is composed of a Presiding Justice and Eight Associate Justices, with the rank of Justice of the Court of Appeals. It sits in three [3] divisions of three members of each.

B. Nature of Sandiganbayan

Sandiganbayan is NOT a constitutional court. **It is a statutory court**; that is, it is created not only by the Constitution but by statute, although its creation is mandated by the Constitution.[696]

C. Jurisdiction of Sandiganbayan

Original Jurisdiction

- Violations of RA 3019 (AGCPA) as amended; RA 1379; and Chapter II, Section 2, Titile VII, Book II of the RPV where one or more of the accused are officials occupying the following

[691] Cruz, Philippine Political Law, p.336
[692] Bernas Primer at 442 (2006 ed.)
[693] Cruz, Philippine Political Law, p.336
[694] Bernas Primer at 442 (2006 ed.)
[695] Bernas Primer at 442 (2006 ed.)
[696] Bernas Primer at 443 (2006 ed.)

positions in the government, whether in a permanent, acting or interim capacity at the time of the commission of the offense:

a. Officials of the Executive branch with the position of Regional Director or higher, or with Salary Grade Level 27 (G27) according to RA 6758.
b. Members of Congress and officials thereof with G27 an up;
c. Members of the Judiciary without prejudice to the Constitution;
d. Chairmen and members of the Constitutional Commissions without prejudice to the Constitutions; and
e. All other national and local officials with G27 or higher.

- Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in Subsection a in relation to their office;
- Civil and criminal cases filed pursuant to and in connection with EO nos. 1, 2, 14, and 14-A issued in 1986.

Exclusive Original Jurisdiction over petitions for the issuance of the writs of mandamus, prohibitions, certiorari, habeas corpus, injunction and other ancillary writs and processes *in aid of its appellate jurisdiction;* Provided, that jurisdiction over these petitions shall not be exclusive of the Supreme Court;

Exclusive Appellate Jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction. (RA 8249)

The following requisites must concur in order that a case may fall under the exclusive jurisdiction of the Sandiganbayan:

1. The offense committed is a violation of RA 1379, Chapter II, Section , Title VII, Book II of the Revised Penal Code, Executive Orders Nos. 1, 2 14 and 14-A, issued in 1986, or other offenses or felonies whether simple or complexed with other crimes;
2. The offender committing the offenses (violating RA 3019, RA 1379, the RPC provisions, and other offenses, is a public official or employee holding any of the positions enumerated in par. A, Section 4, RA 8249; and
3. The offense committed is in relation to the office. (Lacson v. Executive Secretary, 1999)

Private individuals. "In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, they shall be tried jointly with said public officers and employees. (Section 4, PD 1606)"

"Private persons may be charged together with public officers to avoid repeated and unnecessary presentation of witnesses and exhibits against conspirators in different venues, especially of the issues involved are the same. It follows therefore that if a private person may be tried jointly with public officers, he may also be convicted jointly with them, as in the case of the present petitioners." (Balmadrid v. The Honorable Sandiganbayan, 1991)

Macalino v. Sandiganbaya, 2002: It was held that because the Philippine National Construction Company (PNCC0 has no illegal charter, petitioner, an officer of PNCC, is not a public officer. That being so, the Sandiganbayan has no jurisdiction over him. The only instance when the Sandiganbayan may exercise jurisdiction over a private individual is when the complaint charges him either as a co-principal, accomplice or accessory of a public officer who has been charged within the jurisdiction of the Sandiganbayan.

Determination of Jurisdiction. Whether or not the Sandiganbayan or the RTC has jurisdiction over the case shall be determined by the allegations in the information specifically on whether or not the acts complained of were committed in relation to the official functions of the accused. It is required that the charge be set forth with particularity as will reasonably indicate that the exact offense which the accused is alleged to have committed is one in relation to his office. Thus, the mere allegation in the information that the offense was committed by the accused public officer "in relation to his office" is a conclusion of law, not a factual averment that would show the close intimacy between the offense charged and the discharge of the accused's official duties. (Lacson v. Executive Secretary)

Binay v. Sandiganbayan, 1999: The Supreme Court discussed the ramifications of Section 7, RA 8249, as follows:

1. If trial of the cases pending before whatever court has already begun as of the approval of RA 8249, the law does not apply;
2. If trial of cases pending before whatever court has not begun as of the approval of RA 8249, then the law applies, and the rules are:
    i. If the Sandiganbayan has jurisdiction over a case pending before it, then it retains jurisdiction;
    ii. If the Sandiganbayan has no jurisdiction over a cased pending before it, the case shall be referred to the regular courts;
    iii. If the Sandiganbayan has jurisdiction over a case pending before a regular court, the latter loses jurisdiction and the same shall be referred to the Sandiganbayan;

iv. If a regular court has jurisdiction over a case pending before it, then said court retains jurisdiction.

D. Decisions/Review

The unanimous vote of all the three members shall be required for the pronouncement of judgment by a division. Decisions of the Sandiganbayan shall be reviewable by the Supreme Court on a petition for certiorari.

a. It is now settled that Section 13, RA 3019, makes it mandatory for the Snadiganbayan to suspend any public officer against whom a valid information charging violation of that law, or any offense involving fraud upon the government or public funds or property is filed. (Bolastig v. Sandiganbayan, 235 SCRA 103)
b. The appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited to questions of law. (Republic v. Sandiganbayan, 2002)

IV. Ombudsman

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article 1X-A of this Constitution.

Section 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.

Section 10. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary which shall not be decreased during their term of office.

Section 11. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed **in any form or manner** against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
(5) Request any government agency for assistance and information necessary in the

discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

A. Composition

- An Ombudsman to be known as the Tanodbayan.
- One over-all Deputy
- At least one Deputy each for Luzon, Visayas and Mindanao
- A separate Deputy for the military establishment may likewise be appointed

B. Qualifications

The Ombudsman and his Deputies must be:
1. Natural Born Citizens of the Philippines
2. At least 40 years of age
3. Of recognized probity and independence
4. Members of the Philippine Bar
5. Must not have been candidates for any elective office in the immediately preceding election.

The Ombudsman must have been a judge or engaged in the practice of law for ten years or more.

C. Appointment

By the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of at least three nominees for every vacancy thereafter. All vacancies to be filled in three months.

a. Term of Office: Seen years without reappointment
b. Rank and Salary: The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary which shall not be decreased during his term of office.
c. Fiscal Autonomy: The Office of the Ombudsman shall enjoy fiscal autonomy.

D. Disqualifications/Inhibitions

During their tenure:

- Shall not hold other office or employment
- Shall not engage in the practice of any profession or in the active management of control of any business which in any way may be affected by the functions of his office;
- Shall not be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, or any of its subdivisions, etc,;
- Shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

E. Jurisdiction

How is the jurisdiction of the Ombudsman over a person determined? For purposes of determining the scope of the jurisdiction of the Ombudsman, a public officer is one to whom some of the sovereign functions of the government has been delegated.
(The National Centennial Commission performs executive power which "is generally defined as the power to enforce and administer laws. It is the power of carrying the laws into practical operation and enforcing their due observance." The executive function, therefore, concerns the implementation of the policies as set forth by law. *Laurel v. Desierto, 2002*)

Q: Charged with murder, the Governor challenges the authority of the office of the Ombudsman to conduct the investigation. He argues that the authority of the Ombudsman is limited to "crimes related to or connected with an official's discharge of his public functions." Decide.
A: The Ombudsman has authority. Section 12 says that he may "investigate… any act or omission of any public official… when **such act or omission appears to be illegal, unjust, improper or inefficient**. Murder is illegal. And since it was allegedly committed by a public official it comes within the jurisdiction of the Ombudsman. (Deloso v. Domingo, 1990)

F. Powers and Duties

(See Section 12 and 13 of Article XI)
Over the years the scope of the powers of the Ombudsman under Section 12 has been clarified thus settling various disputed issues:

1. The ombudsman can investigate only officers of government owned corporations with original charter. PAL, even when still owned by the government, did not have original charter.[697]

[697] *Khan, Jr v Ombudsman*, G.R. No. 125296, July 20. 2006.

2. The jurisdiction of the Ombudsman over disciplinary cases involving public school teachers has been modified by Section 9 of R.A. 4670, otherwise known as the Magna Carta for Public School Teachers, which says that such cases must first go to a committee appointed by the Secretary of Education.[698]
It is erroneous, thus, for respondents to contend that R.A. No. 4670 confers an exclusive disciplinary authority on the DECS over public school teachers and prescribes an exclusive procedure in administrative investigations involving them. R.A. No. 4670 was approved on June 18, 1966. On the other hand, the 1987 Constitution was ratified by the people in a plebiscite in 1987 while R.A. No. 6770 was enacted on November 17, 1989. It is basic that the 1987 Constitution should not be restricted in its meaning by a law of earlier enactment. The 1987 Constitution and R.A. No. 6770 were quite explicit in conferring authority on the Ombudsman to act on complaints against *all* public officials and employees, with the exception of officials who may be removed only by impeachment or over members of Congress and the Judiciary.

3. The Ombudsman Act authorizes the Ombudsman to impose penalties in administrative cases.[699] Section 21 of RA 6770 vests in the Ombudsman "**disciplinary authority over all elective and appointive officials of the Governmen**t," except impeachable officers, members of Congress, and the Judiciary. And under Section 25 of RA 6770, the Ombudsman may impose in administrative proceedings the "**penalty ranging from suspension without pay for one year to dismissal** with forfeiture of benefits or a fine ranging from five thousand pesos (₱5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman x x x." Clearly, under RA 6770 the Ombudsman has the power to impose directly administrative penalty on public officials or employees.[700]
Note, however, that according to the Local Government Code, elective officials may be dismissed only by the proper court. "Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove."[701]

4. The Special Prosecutor may not file an information without authority from the Ombudsman. Republic Act No. 6770, by conferring upon the Ombudsman the power to prosecute, likewise grants to the Ombudsman the power to authorize the filing of informations. A delegated authority to prosecute was also given to the Deputy Ombudsman, but no such delegation exists to the Special Prosecutor. Nor is there an implied delegation. The Special Prosecutor prosecutes only when authorized by the Ombudsman.[702]

5. The Ombudsman has been conferred rule making power to govern procedures under it.[703] One who is answering an administrative complaint filed before the Ombudsman may not appeal to the procedural rules under the Civil Service Commission.[704]

6. The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistance, either in their regular capacities or as deputized Ombudsman prosecutors.[705]

7. A preventive suspension will only last ninety (90) days, not the entire duration of the criminal case like petitioners seem to think. Indeed, it would be constitutionally proscribed if the suspension were to be of an indefinite duration or for an unreasonable length of time. The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days, in consonance with Presidential Decree No. 807, now Section 52 of the Administrative Code of 1987.[706]

Q: RA 6770 empowers the Office of the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions. What is the constitutional basis for this power?
A: Article XI, Section 13(8) means that the Ombudsman may be validly empowered with prosecutorial functions by the legislature, and this the latter did when it passed RA 6770. (Camanag v. Guerrero, 1997)

Q: RA 6770 empowers the Office of the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions. Does it not violate the principle of separation of powers since the power to conduct preliminary investigation is exclusive to the executive branch?
A: If it is authorized by the Constitution it cannot be logically argued that such power or the exercise thereof is unconstitutional or violative of the

[698] *Ombudsman v. Estandarte,* GR 168670, April 13, 2007.
[699] *Ombudsman v. CA,* November 22, 2006; Ombudsman v. Lucero, November 24, 2006.
[700] **Ombudsman v. CA,** G.R. No. 168079, July 17, 2007.
[701] Sangguniang Barangay v. Punong Barangay, G.R. No. 170626, March 3, 2008.
[702] *Perez v. Sandigabayan*, G.R. No. 166062, September 26, 2006.
[703] *Buencamino v. CA,* GR 175895,April 4, 2007.
[704] Medina v. COA, G.R. No. 176478, February 4, 2008.
[705] *Honasan II v. Panel of Investigators of the DOJ,* G.R. No. 159747, April 13, 2004.
[706] Villasenor v Sandiganbayan G.R. No. 180700, March 4, 2008

principle of the separation of powers. (Camanag v. Guerrero, 1997)

Q: RA 6770 empowers the Office of the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions. Does it not directly contravene Article XI, Section 7 by diminishing the authority and power lodged in the Office of the Special Prosecutor?
A: In *Acop v. Office of the Ombudsman, 1995,* the Court upheld not only the power of Congress to so place the Office of the Special Prosecutor under the Ombudsman, but also the power of Congress to remove some of the powers granted to the Office of Special Prosecutor. . (Camanag v. Guerrero, 1997)

Q: Are the powers of Ombudsman delegable?
A: The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistance, either in their regular capacities or as deputized Ombudsman prosecutors. (Honasan II v. Panel of Investigators of the DOJ, 2004)

"In any form or manner" It was held that the fact that the Ombudsman may start an investigation on the basis of any anonymous letter does not violate the equal protection clause. For purposes of initiating preliminary investigation before the Office of the Ombudsman, a complaint "in any form or manner" is sufficient. (Garcia v. Miro, 2003)[707]

Power of Contempt. The Ombudsman is also granted by law the power to cite for contempt, and this power may be exercised by the Ombudsman while conducting preliminary investigation because preliminary investigation is an exercise of quasi-judicial functions. (Lastimosa v. Vasquez, 243 SCRA 497)[708]

Can the Court be compelled to review the exercise of discernment in prosecuting or dismissing a case before the Ombudsman? It has been consistently held that it is not for the Court to review the Ombudsman's paramount discretion in prosecuting or dismissing a complaint filed before his office. The rule is based not only upon the respect for the investigatory and prosecutor powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. (Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it. (Olairez v. Sandiganbayan, 2003)

There is, however, one important exception to this rule, and that is, when grave abuse of discretion on the part of the Ombudsman in either prosecuting or dismissing a case before it is evident. In this event, the act of the Ombudsman can justifiably be assailed.[709]

Ombudsman has no authority to directly dismiss a public officer from government service. Under Section 13(3) of Article XI, the Ombudsman can only recommend to the officer concerned the removal of a public officer or employee found to be administratively liable. (Taplador v. Office of the Ombudsman, 2002) Be that as it may, the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize erring officer or employee is a ground for disciplinary action. Thus, there is a strong indication that the Ombudsman's recommendation is not merely advisory in nature but actually mandatory within the bounds of law. This, should not be interpreted as usurpation of the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority, but a shared or concurrent authority in respect of the offense charged. (Ledesma v. CA, 2005)

F. Power to Investigate

The power to investigate, including preliminary investigation, belongs to the Ombudsman and not to the Special Prosecutor. (Acop v. Ombudsman, 1995)

Uy v. Sandiganbayan, 2001: It was held that under Sections 11 and 15, RA 6670, the Ombudsman s clothed with the authority to conduct preliminary investigation and to prosecute all criminal cases involving public officers and employees, not only those within the jurisdiction of the Sandiganbayan, but those within the jurisdiction of regular courts as well. The clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.

Ombudsman's Power to Investigate, Not Exclusive. While the Ombudsman's power to investigate is primary, it is not exclusive and, under the Ombudsman Act of 1989, he may delegate it to others and take it back any time he wants to. (Acop v. Ombudsman, 1995)

The Ombudsman can also investigate criminal offenses committed by public officers which have

[707] Antonio Nachura, Outline on Political Law, 351 (2006)
[708] Antonio Nachura, Outline on Political Law, 351 (2006)
[709] Antonio Nachura, Outline on Political Law, 353 (2006)

no relation to their office. (Vasquez v. Alino, 271 SCRA 67)

Q: May the military deputy investigate civilian police?
A: Because the power of the Ombudsman is broad and because the Deputy Ombudsman acts under the direction of the Ombudsman, the power of the Military Deputy to investigate members of the civilian police has also been affirmed. (Acop v. Ombudsman, 1995)

Bar Question (2003)
Ombudsman; Power to Investigate
A group of losing litigants in a case decided by the Supreme Court filed a complaint before the Ombudsman charging the Justices with knowingly and deliberately rendering an unjust decision in utter violation of the penal laws of the land. Can the Ombudsman validly take cognizance of the case? Explain.
SUGGESTED ANSWER: No, the Ombudsman cannot entertain the complaint. As stated in the case of In re: Laureta. 148 SCRA 382 [1987], pursuant to the principle of separation of powers, the correctness of the decisions of the Supreme Court as final arbiter of all justiciable disputes is conclusive upon all other departments of the government; the Ombudsman has no power to review the decisions of the Supreme Court by entertaining a complaint against the Justices of the Supreme Court for knowingly rendering an unjust decision.
SECOND ALTERNATIVE ANSWER: Article XI, Section 1 of the 1987 Constitution provides that public officers must at all times be accountable to the people. Section 22 of the Ombudsman Act provides that the Office of the Ombudsman has the power to investigate any serious misconduct allegedly committed by officials removable by impeachment for the purpose of filing a verified complaint for impeachment if warranted. The Ombudsman can entertain the complaint for this purpose.

Q: May the Ombudsman act on a complaint filed by disgruntled party litigants against the Supreme Court alleging certain named members of the Court as having committed acts that appear to be illegal, unjust, improper or inefficient? Would it violate the principle of separation of powers if he takes cognizance?
Suggested Answer by Abelardo Domondon: Yes, it is the duty of the Ombudsman to investigate "on complaint by any person, any act or omission of any public official, employee, office or agency when such act or omission appears to be illegal, unjust, improper or inefficient." (Article XI, Section 13(1))

G. Power to Suspend

Preventive Suspension. The power to investigate also includes the power to impose preventive suspension. (Buenaseda v. Flavier, 1993)

Suspension under the Ombudsman Act vis-à-vis the Local Government Code:
In order to justify the preventive suspension of a public official under Section 24 of RA 6770, the evidence of guilt should be strong, and:
a. The charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty;
b. That the charges should warrant removal form the service; or
c. The respondent's continued stay in office would prejudice the case filed against him.
The Ombudsman can impose the 6-month preventive suspension to all public officials, whether elective or appointive, who are under investigation.

On the other hand, in imposing the shorter period of sixty (60) days of preventive suspension prescribed in the Local Government Code of 1991 on an elective local official (at any time after issues are joined), it would be enough that:
a. There is reasonable ground to believe that the respondent has committed the act or acts complained or;
b. The evidence of culpability is strong;
c. The gravity of the offense so warrants; or
d. The continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. (Jose Miranda v. Sandiganbayan, 2005)

Bar Question (2004)
Ombudsman: Power to Suspend; Preventive Suspension
Director WOW failed the lifestyle check conducted by the Ombudsman's Office because WOWs assets were grossly disproportionate to his salary and allowances. Moreover, some assets were not included in his Statement of Assets and Liabilities. He was charged of graft and corrupt practices and pending the completion of investigations, he was suspended from office for six months.

Q: Aggrieved, WOW petitioned the Court of Appeals to annul the preventive suspension order on the ground that the Ombudsman could only recommend but not impose the suspension. Moreover, according to WOW, the suspension was imposed without any notice or hearing, in violation of due process. Is the petitioner's contention meritorious? Discuss briefly. (5%)
SUGGESTED ANSWER: The contention of Director WOW is not meritorious. The suspension meted out

to him is preventive and not punitive. Section 24 of Republic Act No. 6770 grants the Ombudsman the power to impose preventive suspension up to six months. Preventive suspension maybe imposed without any notice or hearing. It is merely a preliminary step in an administrative investigation and is not the final determination of the guilt of the officer concerned. (Garcia v. Mojica, 314 SCRA 207 [1999]).

Q: For his part, the Ombudsman moved to dismiss WOWs petition. According to the Ombudsman the evidence of guilt of WOW is strong, and petitioner failed to exhaust administrative remedies. WOW admitted he filed no motion for reconsideration, but only because the order suspending him was immediately executory. Should the motion to dismiss be granted or not? Discuss briefly. (5%)
SUGGESTED ANSWER: The motion to dismiss should be denied. Since the suspension of Director WOW was immediately executory, he would have suffered irreparable injury had he tried to exhaust administrative remedies before filing a petition in court (University of the Philippines Board of Regents v. Rasul, 200 SCRA 685 [19910Besides, the question involved is purely legal. (Azarcon v. Bunagan, 399 SCRA 365 [2003]).

Bar Question (1996)
Ombudsman; Power to Suspend; Preventive Suspension
An administrative complaint for violation of the Anti-Graft and Corrupt Practices Act against X was filed with the Ombudsman. Immediately after taking cognizance of the case and the affidavits submitted to him, the Ombudsman ordered the preventive suspension of X pending preliminary investigation. X questioned the suspension order, contending that the Ombudsman can only suspend preventively subordinate employees in his own office. Is X correct? Explain.
SUGGESTED ANSWER: No, X is not correct. As held in Buenaseda vs. Flavier, 226 SCRA 645. under Section 24 of Republic Act No. 6770, the Ombudsman can place under preventive suspension any officer under his disciplinary authority pending an investigation. The moment a complaint is filed with the Ombudsman, the respondent is under his authority. Congress intended to empower the Ombudsman to suspend all officers, even if they are employed in other offices in the Government. The words "subordinate" and "in his bureau" do not appear in the grant of such power to the Ombudsman.

H. Power of Ombudsman Over His Office

Under the Constitution, the Office of the Ombudsman is an independent body. As a guaranty of this independence, the Ombudsman has the power to appoint all officials and employees of the Office of the Ombudsman, except his deputies. This power necessarily includes the power of setting, prescribing and administering the standards for the officials and personnel of the Office.
To further ensure its independence, the Ombudsman has been vested with the power of administrative control and supervision of the Office. This includes the authority to organize such directorates for administration and allied services as may be necessary for the effective discharge of the functions of the Office, as well as to prescribe and approve its position structure and staffing pattern. Necessarily, it also includes the authority to determine and establish the qualifications, duties, functions and responsibilities of the various directorates and allied services of the Office. This must be so if the constitutional intent to establish an independent Office of the Ombudsman is to remain meaningful and significant. The Civil Service Commission has no power over this.[710]

I. Claim of Confidentiality

Even the claim of confidentiality will not prevent the Ombudsman from demanding the production of documents needed for the investigation.[711]

In *Almonte v. Vasquez, 1995,* the Court said that where the claim of confidentiality does not rest on the need to protect military, diplomatic or other national security secrets but on general public interest in preserving confidentiality, the courts have declined to find in the Constitution an absolute privilege even for the President.[712]

Moreover, even in cases where matters are really confidential, inspection can be done in camera.[713]

V. Special Prosecutor

Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

This provision applies only to civil actions for recovery of ill-gotten wealth and not to criminal cases. Thus, prosecution of offenses arising from, relating, or incident to, or involving ill-gotten wealth in the said provision may be barred by prescription.

[710] *Ombudsman v. CSC,* G.R. No. 162215, July 30, 2007.
[711] Bernas Primer at 446 (2006 ed.)
[712] Bernas Primer at 447 (2006 ed.)
[713] Bernas Primer at 447 (2006 ed.)

(Presidential Ad-hoc Fact Finding Committee on Behest Loans v. Deseirto, 1999)

VI. Ill-gotten Wealth

Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

This provision applies only to civil actions for recovery of ill-gotten wealth and not to criminal cases. Thus, prosecution of offenses arising from, relating, or incident to, or involving ill-gotten wealth in the said provision may be barred by prescription. (Presidential Ad-hoc Fact Finding Committee on Behest Loans v. Desierto, 1999)

Q: Does Section 15 prevent the prescription of the crime?
A: No. The right to prosecute criminally can prescribe.[714]

Bar Question (2002)
Graft and Corruption; Prescription of Crime
Suppose a public officer has committed a violation of Section 3 (b) and (c) of the AntiGraft and Corrupt Practices Act {RA No, 3019), as amended, by receiving monetary and other material considerations for contracts entered into by him in behalf of the government and in connection with other transactions, as a result of which he has amassed illegally acquired wealth. (a) Does the criminal offense committed prescribe? (2%) (b) Does the right of the government to recover the illegally acquired wealth prescribe? (3%)

SUGGESTED ANSWER:
a) A violation of Section 3(b) and (c) of the Anti-Graft and Corrupt Practices Act prescribes. As held in Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto, 317 SCRA 272 (1999), Article XI, Section 15 of the Constitution does not apply to criminal cases for violation of the Anti-Graft and Corrupt Practices Act
(b) Article XI, Section 15 of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, or from them or from their nominees or transferees, shall not be bared by prescription.

VII. Restriction on Financial Accomodations

Section 16. No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly, by any government-owned or controlled bank or financial institution to the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure.

VIII. Transparency Rule

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

IX. Allegiance to the State and the Constitution

Section 18. Public officers and employees owe the State and this Constitution allegiance at all times and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law.

Q: Miguel is a holder of a "green card" entitling him to be a resident of the United States permanently. In his application for the card he put down his intention to reside in the United States "permanently". He actually immigrated to the United States in 1984 and thereby assumed allegiance to the United States. He however returned to the Philippines in 1987 to run for mayor of a municipality. Is Article XI, Section 18 applicable to him? Does he have the necessary residence requirement?
A: Article XI, Section 18 is not applicable because it has reference to "incumbents." What is applicable is Section 68 of the Omnibus Election Code which bars "a permanent resident of or an immigrant to a foreign country" unless he waives his status as a permanent resident of the foreign country. The mere filing of a certificate of candidacy is not the required waiver. It must be by a special act done before filing a certificate of candidacy. (Caasi v. CA, 1990)

X. Notes and Comments by Domondon on Article XI

1. **Croniyism** which involves unduly favoring a crony to the prejudice of public interest is a

[714] Bernas Primer at 451 (2006 ed.)

form of violation of the oath of office which constitute betrayal of the public trust.

2. An administrative officer given by statute the rank of Justice is not a member of the Judiciary, but of the Executive Department. He may therefore be investigated by the Ombudsman. The Supreme Court does not have jurisdiction to investigate because it would be violative of the concept of separation of powers. (Noblejas v. Tehankee, 1968)

Article XII
NATIONAL ECONOMY AND PATRIMONY

I. Goals of National Economy

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the under-privileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

A. Threefold goal of the national economy

1. More equitable distribution of wealth;
2. Increase of wealth for the benefit of the people;
3. Increased productivity.

B. National Policy on Industrialization and Agricultural Development

What is envisioned is not necessarily agriculturally related industrialization but rather industrialization that is a result of releasing through agrarian reform capital locked up in land. Therefore, this does not mean a hard-bound rule that agricultural development must have priority over industrialization. What is envisioned is a flexible and rational relationship between the two as dictated by the common good.[715]

C. Meaning of the Phrase "UNFAIR FOREIGN COMPETITION AND TRADE PRACTICES"

The phrase is not to be understood in a limited legal and technical sense but in the sense of anything that is harmful to Philippine enterprises. At the same time, however, the intention is not to protect local inefficiency. Nor is the intention to protect local industries from foreign competition at the expense of the consuming public.[716]

D. De-classification of forests reserves

The law on forest reserves was amended by Prsidential Decree No. 643 dated 17 May 1974. Whereas under previous law the concurrence of the National Assembly was needed to withdraw forest reserves found to be more valuable for their mineral contents than for the purpose for which the reservation was made and convert the same into non-forest reserves, legislative concurrence is no longer needed. All that is required is a recommendation from the DENR Secretary indicating which forest reservations are to be withdrawn.[717]

An unclassified forested area may not be acquired by continuous possession since it is inalienable.[718]

[715] Bernas Primer at 453 (2006 ed.)
[716] Bernas Primer at 454 (2006 ed.)
[717] *Apex Mining v. Soutneast Mindanao Gold,* G.R. No. 152613 & No. 152628, June 23, 2006.
[718] *Republic v. Naguiat,* G.R. No. 134209. January 24, 2006.

II. Natural Resources/Regalian Doctrine

Section 2. **All lands of the public domain**, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, **and other natural resources are owned by the State**. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

A. Regalian Doctrine [Jura Regalia]

"The universal feudal theory that ***all lands were held from the Crown"*** (Carino v. Insular Government, 1909)

(Recognized in the 1935, 1973 and 1987 Constitutions; As adopted in a republican system, the medieval concept of *jura regalia* has been stripped of regalia overtones: ownership is vested in the State, not in the head of the State. (Lee Hong Kok v. David, 48 SCRA 372)[719]

[719] Antonio Nachura, Outline on Political Law, 356 (2006)

B. Consequence of the Regalian Doctrine in Section 2

Any person claiming ownership of a portion of the public domain must be able to show title from the state according to any of the recognized modes of acquisition of title. (Lee Hong Kok v. David, 48 SCRA 372)

Q: When the regalia doctrine was introduced into the Philippines by colonizers, did the colonizers strip the natives of their ownership of lands?
A: No. "When as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed that to have been held in the same way from before the Spanish conquest, and never to have been public land." (Carino v. Insular Government, 1909)

C. Imperium and Dominium

In public law, there exists the well-known distinction between government authority possessed by the State which is appropriately embraced in sovereignty, and its capacity to own or acquire property. The former comes under the heading of *imperium*, and the latter of *dominium*. The use of the term *dominium* is appropriate with reference to lands held by the State in its proprietary character. In such capacity, it may provide for the exploitation and use of lands and other natural resources, including their disposition, except as limited by the Constitution.[720]

D. Limits Imposed by Section 2 on the Jura Regalia of the State.

1. Only agricultural lands of the public domain may be alienated.
2. The exploration, development, and utilization of all natural resources shall be under the full control and supervision of the State either by directly undertaking such exploration, development, and utilization or through co-production, joint venture, or production-sharing agreements with qualified persons or corporations.
3. All agreements with the qualified private sector may be for only a period not exceeding twenty-five years, renewable for another twenty-five years. (The twenty-five year limit is not applicable to "water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power," for which

[720] Antonio Nachura, Outline on Political Law, 357 (2006)

"beneficial use may be the measure and the limit of the grant.")

4. The use and enjoyment of marine wealth of the archipelagic waters, territorial sea, and exclusive economic zone shall be reserved for Filipino citizens. (It would seem therefore that corporations are excluded or at least must be fully owned by Filipinos.)
5. Utilization of natural resources in rivers, lakes, bays, and lagoons may be allowed on a "small scale" Filipino citizens or cooperatives- with priority for subsistence fishermen and fishworkers. (The bias here is for the protection of the little people.)[721]

E. Cases on Regalian Doctrine

Sunbeam Convenience Food v. CA, 181 SCRA 443: "We adhere to the Regalian Doctrine where all agricultural, timber and mineral lands are subject to the dominion of the State." Thus, before any land may be classified from the forest group and converted into alienable or disposable land for agricultural or other purposes, there must be a positive act from the Government. The mere fact that a title was issued by the Director of Lands does not confer ownership over the property covered by such title where the property is part of the public forest.

Republic v. Sayo, 191 SCRA 71: It was held that in the absence of proof that property is privately owned, the presumption is that it belongs to the State.
Thus, where there is no showing that the land had been classified as alienable before the title was issued, any possession thereof, no matter how lengthy, cannot ripen into ownership. And all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. (Seville v. National Development Company, 2001)

United Paracale v. de la Rosa, 221 SCRA 108: The Court said that consonant with Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. It is also on the basis of this doctrine that the State has the power to control mining claims, as provided in PD 1214.

Republic v. Register of Deeds of Quezon, 244 SCRA 537: Under the Regalian Doctrine, all lands not otherwise clearly appearing to be privately owned are presumed to belong to the State. In our jurisdiction, the task of administering and disposing lands of the public domain belongs to the Director of Lands and, ultimately, the Secretary of Environment and Natural Resources. The classification of public lands is, thus, an exclusive prerogative of the Executive Department through the Office of the President. Courts have no authority to do so. In the absence of such classification, the land remains unclassified public land under released therefrom and rendered open to disposition.

Ituralde v. Falcasantos, 1999: Forest land is nt capable of private appropriation and occupation in the absence of a positive act of the government declassifying it into alienable or disposable land for agricultural purposes. Accordingly, where there is yet no award or grant to petitioner of the land in question by free patent or other ways of acquisition of public land, petitioner cannot lawfully claim ownership of the land. Possession of forest lands, however long, cannot ripen into private ownership.

F. Reclaimed lands

Q: What is the nature of reclaimed foreshore and submerged lands?
A: They are **lands of public domain** and, unless classified as alienable, may not be disposed of.

Q: For reclaimed land to be registered as private property what is required?
A: (1) There must be a proof that the land had been classified as alienable;
(2) The person seeking registration must show proof of having acquired the property (e.g., by prescription). (Republic v. Enciso, 2005)

Q: Could the Public Estates Authority dispose of reclaimed lands?
A: In order for PEA to sell its reclaimed foreshore and submerged alienable lands of the public domain, there must be legislative authority empowering PEA to sell these lands. Without such legislative authority, PEA could not sell but only lease its reclaimed foreshore and submerged alienable lands of the public domain.
Nevertheless, any legislative authority granted to PEA to sell its reclaimed alienable lands of the public domain would be subject to the constitutional ban on private corporations from acquiring alienable lands of the public domain. Hence, such legislative authority could only benefit private individuals. (Chavez v. PEA and AMARI, July 9, 2002)
"Reclaimed lands of the public domain if sold or transferred to a public or municipal corporation for a monetary consideration become patrimonial property… [and] may be sold… to private parties, whether Filipino citizens of qualified corporations." (May 6, 2003 Resolution)

Q: What is the nature of the Roponggi property in Japan?
A: It is of public dominion (unless it is convincingly shown that the property has become patrimonial).

[721] Bernas Primer at 457 (2006 ed.)

As property of public dominion, the Roponggi lot is outside the commerce of man.

***Chavez v. NHA*, G.R. No. 164527, August 15, 2007.**

Reclaimed land is public land. Before it can be registed as private property is must be classified as alienable.[722] Once classified it becomes alienable. A presidential proclamation is a sufficient instrument for classifying reclaimed land. Thus when President Aquino issued MO 415 conveying the land covered by the Smokey Mountain Dumpsite to the National Housing Authority as well as the area to be reclaimed across R-10, the coneyance implicitly carried with it the declaration that said lands are alienable and disposable. Otherwise, the NHA could not effectively use them in its housing and resettlement project. President Ramos made similar conveyances to the NHA.

RA 6957 as amended by RA 7718 provides ample authority for the classification of reclaimed land. The fact that RA 6957 as modified by RA 7718 declared that t reclaimed lands that shall serve as payment to the project proponent already implies that the the land has been classified. This conclusion is necessary for how else can the land be used as the enabling component for the Project if such classification is not deemed made.

We ruled in *PEA* that "alienable lands of public domain must be transferred to qualified private parties, or to government entities not tasked to dispose of public lands, before these lands can become private or patrimonial lands (emphasis supplied)." To lands reclaimed by PEA or through a contract with a private person or entity, such reclaimed lands still remain alienable lands of public domain which can be transferred only to Filipino citizens but not to a private corporation. This is because PEA under PD 1084 and EO 525 is tasked to hold and dispose of alienable lands of public domain and it is only when it is transferred to Filipino citizens that it becomes patrimonial property.

On the other hand, the NHA is a government agency not tasked to dispose of public lands under its charter—The Revised Administrative Code of 1987. The NHA is an "end-user agency" authorized by law to administer and dispose of reclaimed lands. The moment titles over reclaimed lands based on the special patents are transferred to the NHA by the Register of Deeds, they are automatically converted to patrimonial properties of the State which can be sold to Filipino citizens and private corporations, 60% of which are owned by Filipinos. The reason is obvious: if the reclaimed land is not converted to patrimonial land once transferred to NHA, then it would be useless to transfer it to the NHA since it cannot legally transfer or alienate lands of public domain. More importantly, it cannot attain its avowed purposes and goals since it can only transfer patrimonial lands to qualified beneficiaries and prospective buyers to raise funds for the SMDRP.

From the foregoing considerations, we find that the 79-hectare reclaimed land has been declared alienable and disposable land of the public domain; and in the hands of NHA, it has been reclassified as patrimonial property.[723]

G. Exploration, Development and Utilization of Inalienable Resources.

"The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens…"

Q: Section 2 speaks of "co-production, joint venture, or production sharing agreements" as modes of exploration, development, and utilization of inalienable lands. Does this effectively exclude the lease system?
A: Yes, with respect to mineral and forest lands. (Agricultural lands may be subject of lease)[724]

Q: Who are qualified to take part in the exploration, development and utilization of natural resources?
A: Filipino citizens and corporations or associations at least sixty percent of whose capital is owned by Filipino citizens. (Note however, that as to marine wealth, only Filipino citizens are qualified. This is also true of natural resources in rivers, bays, lakes and lagoons, but with allowance for cooperatives.)[725]

Q: If natural resources, except agricultural land, cannot be alienated, how may they be explored, developed, or utilized?
A: (1) Direct undertaking of activities by the State or
(2) Co-production, joint venture, or production-sharing agreements with the State and all "under the full control and supervision of the State."

Q: May the State enter into service contracts with foreign owned corporations?
A: Yes, but subject to the strict limitations in the last two paragraphs of Section 2. Financial and e technical agreements are a form of service contract. Such service contacts may be entered into *only* with respect to minerals, petroleum, and

[722] *Republic v. Enciso,* G.R. 160145, November 11, 2005.

[723] *Chavez v. NHA,* G.R. No. 164527, August 15, 2007.

[724] Bernas Primer at 457 (2006 ed.)

[725] Bernas Primer at 459 (2006 ed.)

other mineral oils. The grant of such service contracts is subject to several safeguards, among them: (1) that the service contract be crafted in accordance with a general law setting standard of uniform terms, conditions and requirements; (2) the President be the signatory for the government; and (3) the President report the executed agreement to Congress within thirty days. (La Bugal B'laan Tribal Assoc., 2004, Reconsideration, 2005)

Q: When technical and financial assistance agreement is entered into under Section 2, can it include some management role for the foreign corporation?
A: Yes. While the Constitution mentions only financial and technical assistance they necessarily include the managerial expertise needed in the creation and operation of the large-scale mining/extractive enterprise, but the government through its agencies (DENR/MGB) must actively exercises full control and supervision over the entire enterprise. (La Bugal B'laan Tribal Assoc., 2004, Reconsideration, 2005)

H. Marine Wealth

Article XII, Section 2: "…The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens. xxx"

Article XII, Section 2: "The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons. "

Marginal Fisherman: A marginal fisherman is defined as an individual engaged in fishing by existing price levels, is barely sufficient to yield a profit or cover the cost of gathering the fish while a "subsistence" fisherman is one whose catch yields but the irreducible minimum to his livelihood.

Section 131 of the Local Government Code defines a "marginal farmer or fisherman" as one engaged in subsistence farming or fishing, which shall be limited to the sale, barter or exchange of agricultural or marine products produced by himself and his immediate family. The preferential right granted to them is not absolute. (Tano v. Socrates, 1997)

F. Financial and Technical Agreements

The 1987 Constitution did not completely do away with service contracts; but now their scope has been limited and are now called financial and technical agreements and hey may be entered into with foreign corporations. The grant of such service contracts is subject to several safeguards, among them: (1) that the service contract be crafted in accordance with a general law setting standard or uniform terms, conditions and requirements; (2) the President be the signatory for the government; and (3) the President report the executed agreement to Congress within thirty days.[726]
Foreign contractors may provide not just capital, techonology and technical know-how but also managerial expertise to the extent needed for the creation and operation of the large-scale mining/extractive enterprise. But the government, through its agencies (DENR, MGB) must actively exercises full control and supervision over the entire enterprise.[727]

III. Lands of Public Domain

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

Classification of Public Lands. The classification of public lands is a function of the executive branch of government, specifically the Director of Lands, now the Director of the Land Management Bureau. The decision of the Director, when approved by the Secretary of the Department of Environment and Natural Resources, as to questions of fact, is conclusive upon the courts. (Republic v. Imperial, 1999)
The prerogative of classifying public lands pertains to administrative agencies which have been

[726] *La Bugal B'laan Tribal Assoc. D*ENR, G.R. No. 127882, December 1, 2004. (On Reconsideration) and February 1, 2005.
[727] Id.

specially tasked by statutes to do so and the courts will not interfere on matters which are addressed to the sound discretion of government and/or quasi-judicial agencies entrusted with the regulation of activities coming under their special technical knowledge and training.[728]

Q: Who may change the classification of public lands, e.g., from inalienable to alienable, and how is the classification done?
A: The classification of public lands is the exclusive prerogative of the President upon recommendation of the pertinent department head. (CA No. 141)

Q: Does the classification of land change automatically when the nature of the land changes?
A: No. A positive act of the executive is needed. Anyone who claims that the classification has been changed must be able to show the positive act of the President indicating such positive act. The classification is descriptive of its legal nature and not of what the land actually looks like. Hence, for instance, that a former forest has been denuded does not by the fact meant that it has ceased to be forest land. (Director of Lands v. Judge Aquino, 1990)

Q: Can a land have a mixed classification, e.g., partly mineral, partly agricultural?
A: No. "The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral.(Republic v. CA)
Alienable lands of the public domain shall be limited to agricultural lands. It was determined that the lands subject of the decree of the Court of First Instance were not alienable lands of the public domain, being part of the reservation for provincial park purposes and thus part of the forest zone. Forest land cannot be owned by private persons; its is not registrable, and possession thereof, no matter how lengthy, cannot convert it into private land, unless the land is reclassified and considered disposable and alienable.

> Foreshore land is that part of the land which is between the high and low water, and left dry by the flux and reflux of the tides. It is part of the alienable land of the public domain and may be disposed of only by lease and not otherwise. (Republic v. Imperial, 1999)

Private corporations or associations may not hold such alienable lands of the public domain except by lease. In *Director of Lands v. IAC* and *Acme Plywood &Veneer Co., 146 SCRA 509,* the Supreme Court declared that the 1973 Constitution cannot impair vested rights. Where the land was acquired in 1962 when corporation were allowed to acquire lands not exceeding 1,024 hectares, the same may be registered in 1982, despite the constitutional prohibition against corporations acquiring lands of the public domain. This is the controlling doctrine today.

> The 1987 Constitution prohibits private corporations from acquiring alienable lands of the public domain. *Amari* being a private corporation, is barred from such acquisition. The Public Estates Authority (PEA) is not an end user agency with respect to the reclaimed lands under the amended Joint Venture Agreement, and PEA may simply turn around and transfer several hundreds of hectares to a single private corporation in one transaction. (Chavez v. PEA, 2003)

Q: When does land of the public domain become private land?
A: When it is acquired from the government either by purchase of by grant. (As held in *Oh Cho v. Director of Lands*, 75 Phil 980, "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors-in-interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest.")

Q: Can prescription transform public land into private land?
A: Yes, if it is alienable land. ("Open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without need of judicial or other sanction, ceases to be public land and becomes private property. Such open, continuous, exclusive and notorious occupation of the disputed properties for more than 30 years must, however, be **conclusively** established. This quantum of proof is necessary to avoid erroneous validation of actually fictitious claims or possession over the property in dispute. (San Miguel Corporation v. CA, 1990)

Q: In computing the thirty-year period for acquisitive prescription under Section 49(9) of the Public Land Law, can the period before the land (e.g. forest land) is converted into alienable public land be included?
A: NO. The thirty-year period only begins to toll only from the time the land is converted into alienable land. (Almeda v. CA, 1991)

Q: Do mining claims acquired, registered, perfected, and patentable under the Old Mining Law mature to private ownership that would entitle the claimant to the ownership thereof?
A: "Mere location does not mean absolute ownership over the affected land or the mining claim. It merely segregates the located land or area form the public domain by barring other would-be locators from locating the same and appropriating for themselves the minerals found therein. To rule otherwise would imply that location

[728] *Republic v. Mendoza,* GR 153727. March 28, 2007.

is all that is needed to acquire and maintain rights over a located mining claim. This, we cannot approve or sanction because it is contrary to the intention of the lawmaker that the locator should faithfully and consistently comply with the requirements for annual work and improvements in the located mining claims." (Director of Lands v. Kalahi Investments, 1989)

Q: May aliens ***lease*** land of the public domain?
A: No, because that would enjoy enjoyment of the natural resources of the public domain.

Q: May an alien lease a private land?
A: Yes. A lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy the real property on condition he is granted Philippine citizenship.

IV. Citizenship Requirement

Co-production, joint venture or production sharing agreements [for exploration, development and utilization of natural resources]	Filipino citizens or Corporations or associations at least 60% of whose capital is Filipino owned. (Art. XII, Section 2) Note:Agreements shall not exceed a period of 25 years, renewable for anther 25 years.
Use and enjoyment of the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone {PD 1599]; UN Convention on the Law of the Sea (ratified by RP in August, 1983)]	Exclusively for Filipino Citizens (Art. XII, Section 2)
Alienable lands of the public domain [which shall be limited to agricultural lands]:	Only for Filipino citizens may acquire not more than 12 hectares by purchase, homestead or grant; or lease not more than 500 hectares. Private corporations may lease not more than 1,000 hectares for 25 years, renewable for another 25 years.
Certain areas of investment [as Congress shall provide when the national interest so dictates] *See Annex 1:"Sixth Regular Foreign Investment Negative List," Lists A and B)*	Reserved for Filipino citizens or corporations 60% of whose capital is Filipino owned, although Congress may prescribe a higher percentage of Filipino ownership (Art. XII, Section 10)
Franchise, certificate or any other form of authorization for the operation of a public utility.	Only to citizens of the Philippines or corporations at least 60% of whose capital is Filipino owned. (Art. XII, Section 11)

V. Forest Lands and Parks

Section 4. The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

VI. Ancestral Lands and Ancestral Domain

Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

VII. Stewardship Concept; Transfer of Lands

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Section 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

A. Stewardship Concept

See Section 6.

B. Private Lands

1. Rule and Exceptions

RULE: No private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

EXCEPTIONS:

1. Hereditary Succession (This does not apply to testamentary dispositions, Ramirez v. Vda. De Ramirez, 111 SCRA 740)
2. A natural born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands (Section 8, Article XII)
3. Americans hold valid title to private lands as against private persons

No private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.
Any sale or transfer in violation of the prohibition is null and void. In *Ong Ching Po v. CA, 239 SCRA 341,* it was held that even if the petitioner proves that the Deed of Sale in his favor is in existence and duly executed, nonetheless, being an alien, petitioner is disqualified from acquiring and owning real property.

> **Frenzel v. Catito, 2003:** The Supreme Court said that inasmuch as the petitioner is an alien, he is disqualified form acquiring and owning lands in the Philippines. The sale of three parcels of lands was null and void. Neither can the petitioner recover the money he had spent for the purchase thereof. Equity, as a rule will follow the law, and will not permit to be done indirectly that which, because of public policy, cannot be done directly.

An action to recover the property sold filed by the former owner will lie. (The pari delicto rule has been abandoned as early as PBC v. Lui She, 21 SCRA 52, where the Supreme Court declared that a lease for 99 years, with a 50-year oprtion to purchase the property if and when Wong Heng would be naturalized, is a virtual surrender of all rights incident to ownership, and therefore, invlaid.)

Land sold to an alien which was later transferred to a Filipino citizen—or where the alien later becomes a Filipino citizen—can no longer be recovered by the vendor, because there is no longer any public policy involved. (Republic v. IAC, 175 SCRA 398; Halili v. CA, 1997; Lee v. Director of Lands, 2001)

A natural born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.
Thus, even if private respondents were already Canadians when they applied for registration of the properties in question, there could be no legal impediment for the registration thereof, considering that it is undisputed that they were formerly natural-born citizens. (Republic v. CA, 235 SCRA 657)
RA 8179 provides that natural-born Filipino citizen may acquire to a maximum area of private land to 5,000 square meters for urban land and 3 hectares for rural land. Furthermore, such land may now be used for business and for other purposes.

Americans hold valid title to private lands as against private persons.

A previous owner may no longer recover the land from an American buyer who succeeded in obtaining title over the land. Only the State has the superior right to the land, through the institution of *escheat proceedings* [as a consequence of the violation of the Constitution], or through an *action for reversion* [as expressly authorized under the Public Land Act with respect to lands which formerly formed part of the public domain].

2. Remedies to Recover Private Land from Disqualified Alien

1. Escheat Proceedings
2. Action for Reversion under the Public Land Act
3. An action for recovery filed by the former Filipino owner (unless the land is sold to an American citizen prior to July 3, 1974 and the American citizen obtained title thereto.

Action for reversion under the Public Land Act.
The Director of Lands has the authority and the specific duty to conduct investigations of alleged fraud in obtaining free patents and the corresponding titles to alienable public lands, and , if facts disclosed in the investigation warrant, to file the corresponding court action for reversion of the land to the State. (Republic v. CA, 172 SCRA 1)
The action of the State for reversion to the public domain of land fraudulently granted to private individuals is imprescriptible. (Baguio v. Republic, 1999)
But it is the State alone which may institute reversion proceedings against public lands allegedly acquired through fraud and misrepresentation pursuant to Section 101 of the Public Land Act. Private parties are without legal standing at all to question the validity of the respondent's title (Urquiga v. CA, 1999)
Thus, in *Tankiko v. Cezar, 1999*, it was held that where the property in dispute is still part of the public domain, only the State can file suit for reconveyance of such public land. Respondents, who are merely applicants for sales patent thereon,

are not proper parties to file an action for reconveyance.

> The State can be put in estoppels by the mistakes or errors of its officials or agents. Estoppel against the State is not favored; it may be invoked only in rare and unusual circumstances as it would operate to defeat the effective operation of a policy adopted to protect the public. However, the State may not be allowed to deal dishonorably or capriciously with its citizens.
> In *Republic v. CA, 1999* because for nearly 20 years starting from the issuance of the titles I n1996 to the filing of the complaint in 1985, the State failed to correct and recover the alleged increase in the land area of the titles issued, the prolonged inaction strongly militates against its cause, tantamount to *laches,* which means the "failure or neglect, for an unreasonable and unexpected length of time, to do that which by exercising due diligence could or should have been done earlier." It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either abandoned it or declined to assert it.

Foreign corporations and land. A foreign corporation may buy shares in excess of 40% of the shares of the corporation. But the effect would be that the corporation it buys into would lose its status as a Filipino corporation and its capacity to hold private land.[729]
It should be noted, however, that the prohibition in the Constitution on aliens applies only to ownership of land. It does not extend to all immovable or real property as defined under Article 415 of the Civil Code, that is, those which are considered immovable for being attached to land, including buildings and construction of all kind attached to the soil.[730]

Violation by aliens. An attempt by an alien to circumvent to prohibition on alien acquisition of land can have dire consequences for such alien. Thus an alien may not be reimbursed for the money he gave to his wife to purchase land and build a house.. Upon the dissolution of the community of property the alien reimbursement in equity on the theory that Maria merely held the property in trust. To claim equity he must come with clean hands. Klaus knew he was violating the law when he purchased the land.[731]

[729] *J.G. Summit v. C.A.,* G.R. No. 124293. January 31, 2005
[730] *J.G. Summit v. C.A.,* G.R. No. 124293. January 31, 2005
[731] *Muller v. Muller,* G.R. No. 149615, August 29, 2006.

VIII. Independent Economic and Planning Agency

Section 9. The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.

Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

IX. Filipinization of Areas of Investments

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

Manila Prince Hotel v. GSIS, 277 SCRA 408: The Supreme Court said that the term "patrimony" pertains to heritage—and for over eight decades, the Manila Hotel has been mute witness to the triumphs and failures, loves and frustrations of the Filipino; its existence is impressed with public interest; its own historicity associate with our struggle for sovereignty, independence and nationhood. Verily, the Manila Hotel has become part of our national economy and patrimony, and 51 % of its equity comes within the purview of the constitutional shelter, for it comprises the majority and controlling stock. Consequently, the Filipino First policy provisions is applicable. Furthermore, the Supreme Court said that this provision is a positive command which is complete in itself and needs no further guidelines or implementing rules or laws for its operation. It is *per se* enforceable. It means precisely that Filipinos should be preferred and when the Constitution declares that a right exists in certain specified circumstances, an action may be maintained to enforce such right.

X. Public Utilities

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty *per centum* of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

A franchise, certificate or authorization shall not be exclusive nor for a period more than 50 years, and shall be subject to amendment, alteration or repeal by Congress. All executive and managing officers must Filipino citizens. In *Pilipino Telephone Corporation v. NRC, 2003,* it was held that a franchise to operate a public utility is not an exclusive private property of the franchisee. No franchisee can demand or acquire exclusivitly in the operation of a public utility. Thus, a franchisee cannot complain of seizure or taking of property because of the issuance of another franchise to a competitor.

See *Albano v. Reyes, 175 SCRA 264,* where the Supreme Court said that Congress does not have the exclusive power to issue such authorization. Administrative bodies, e.g. LTFRB, ERB, etc., may be empowered to do so.
In *Philippine Airlines v. Civil Aeronautics Board, 1997* where it was held that Section 10, RA 776, reveals the clear intent of Congress to delegate the authority to regulate the issuance of a license to operate domestic air transport services.
In *United Broadcasting Networks v. National Telecommunications Commission, 2003:* the Supreme Court acknowledged that there is a trend towards delegating the legislative power to authorize the operation of certain public utilities to administrative agencies and dispensing with the requirement of a congressional franchise. However, in this case, it was held that in view of the clear requirement for a legislative franchise under PD 576-A, the authorization of a certificate of public convenience by the NTC for the petitioner to operate television Channel 25 does not dispense with the need for a franchise.

Tatad v. Garcia: The Constitution, in no uncertain terms, requires a franchise for the operation of public utilities. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public. What private respondent, in this case, owns are rail tracks, rolling stocks like coaches, rail stations, terminals and power plant, not public utility. What constitute a public utility is not their ownership but their use to the public.
Bagatsing v. Committee on Privatization: The Court held that Petron is not a public utility; hence there is no merit to petitioner's contention that the sale of the block of shares to Aramco violated Article XII, Section 11 of the Constitution. A public utility is one organized "for hire or compensation" to serve the public, which is given the right to demand its service. Petron is not engaged in oil refining for hire or compensation to process the oil of other parties.

JG Summit Holdings v. CA, 2003: A public utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation, telephone or telegraph service. To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. As the name indicates, "public utility" implies public use and service to the public. A shipyard is not a public utility. Its nature dictates that it serves but a limited clientele whom it may choose to serve at its discretion. It has no legal obligation to render the services sought by each and every client.

TELEBAP v. COMELEC, 289 SCRA 337: All broadcasting, whether by radio or television stations, is licensed by the Government. Radio and television companies do not own the airwaves and frequencies; they are merely given temporary privilege of using them. A franchise is a privilege subject to amendment, and the provision of BP 881 granting free airtime to the COMELEC is an amendment of the franchise of radio and television stations.

JG Summit Holdings v. CA, 2003: A joint venture falls within the purview of an "association" pursuant to Section 11 of Article XII; thus a joint venture which would engage in the business of operating a public utility, such as a shipyard must comply with the 60%-40% Filipino-foreign capitalization requirement.

XI. Preferential Use of Filipino Labor

Section 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced

goods, and adopt measures that help make them competitive.

XII. Trade Policy

Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

XIII. Sustained Development of Human Resource; Practice of Profession

Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

XIV. Cooperatives

Section 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

In *Cooperative Development Authority v. Dolefil Agrarian Reforms Beneficiaries Cooperative, 2002,* the Supreme Court said that, after ascertaining the clear legislative intent of RA 6939, it now rules that the Cooperative Development Authority (CDA) is devoid of any quasi-judicial authority to adjudicate intra-cooperative disputes and, more particularly, disputes related to the election of officers and directors of cooperatives. It may however, conduct hearings and inquiries in the exercise of its administrative functions.

XV. GOCCs

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

XVI. Temporary State Take-Over

Section 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest.

Takeover of Public Utilities. The power given to the President to take over the operation of public utilities does not stand alone. It is activated only if Congress grants emergency powers to the President under Article VI, Section 23.[732]

XVII. Nationalization of Industries

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

XVIII. Nationalization of Industries

Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

Monopoly. A monopoly is "a privilege or peculiar advantage vested in one more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of a particular commodity." Clearly, monopolies are not per se prohibited by the Constitution but may be permitted to exist to aid the government in carrying on an enterprise or to aid in the performance of various services and functions in the interest of the public. However, because monopolies are subject to abuses that can inflict severe prejudice to the public, they are subjected to a higher of State regulation than an ordinary business undertaking (Agan Jr. v. PIATCO)

The Constitution does not absolutely prohibit monopolies. Thus for example, an award for stevedoring and arrastre services to only one

[732] *Obiter* in *David v. Ermita,* G.R. No. 171409, May 3, 2006.

corporation is valid. (Philippine Authority v. Mendoza)

Be that as it may, in *Tatad v. Sec., 1997,* the Supreme Court declared that Article XII, Section 19 is anti-trust in history and spirit; it espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for the prohibition in unmitigated monopolies. A market controlled by one player (monopoly) or dominated by a handful of players (oligopoly) is hardly the marker where honest-to-goodness competition will prevail. In this case, it cannot be denied that our downstream oil industry is operated and controlled by oligopoly, foreign oligopoly at that. So, of only to help the may who are poor from further suffering as a result of unmitigated increase in the prices of oil products due to deregulation, it is a must that RA 8180 be repealed completely.

In *Tanada v. Angara, 272 SCRA 18,* the Supreme Court said that the WTO does not violate Article II Section 19, nor Sections 19 and 12 of Article XII, because these sections should be read and understood in relation to Sections 1 and 13 of Article XII, which require the pursuit of trade policy that "serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity."
In *Association of Philippine Coconut Desiccators v. Philippine Coconut Authority, 1998,* the Supreme Court declared that although the Constitution enshrines free enterprise as a policy, it nevertheless reserves to the Government the power to intervene whenever necessary for the promotion of the general welfare, as reflected in Sections 6 ad 19 of Article XII.

Monopolies in restraint of trade. Contracts requiring exclusivity are not *per se* void. Each contract must be viewed *vis-à-vis* all the circumstances surrounding such agreement in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.[733]

XIX. Central Monetary Authority

Section 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority.

XX. Foreign Loans

Section 21. Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

XXI. Penal Sanctions

Section 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

[733] *Avon v. Luna,* G. R. No. 153674, December 20, 2006.