

OUTLINE REVIEWER IN POLITICAL LAW 2014



Antonio E.B. Nachura

OUTLINE REVIEWER

in

POLITICAL LAW

by

Antonio Eduardo B. Nachura

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CONSTITUTIONAL LAW

I. GENERAL PRINCIPLES

A. Political Law defined. That branch of public law which deals with the organization ,and operations of the governmental organs of the State and defines the relations of the State with the inhabitants of its territory [*People v. Perfecto*, 43 Phil. 887; *Macariola v. Asuncion*, 114 SCRA 77].

B. Scope/Divisions of Political Law.

1. *Constitutional Law.* The study of the maintenance of the proper balance between authority as represented by the three inherent powers of the State and liberty as guaranteed by the Bill of Rights [*Cruz, Constitutional Law*, 1993 ed., p. 1].

2. *Administrative Law.* That branch of public law which fixes the organization of government, determines the competence of the administrative authorities who execute the law, and indicates to the individual remedies for the violation of his rights.

3. *Law on Municipal Corporations.*

4. *Law of Public Officers.*

5. *Election Laws.*

C. Basis of the Study.

1. 1987 Constitution
2. 1973 and 1935 Constitutions
3. Other organic laws made to apply to the Philippines, e.g., Philippine Bill of 1902, Jones Law of 1916, and Tydings-McDuffie Law of 1934.
4. Statutes, executive orders and decrees, and judicial decisions
5. U.S. Constitution.

II. THE PHILIPPINE CONSTITUTION

A. *Nature of the Constitution.*

1. *Constitution defined.* That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised [*Cooley, Constitutional Limitations*, p. 4]. With particular reference to the Constitution of the Philippines: 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 the several departments for their safe and useful exercise for the benefit of the body politic [*Malcolm, Philippine Constitutional Law*, p. 6].

2. *Purpose.* 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 [*11 Am. Jur. 606*].

3. *Classification:*

a) Written or unwritten. 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 statutes of a fundamental character, judicial decisions, commentaries of publicists, customs and traditions, and certain common law principles [*Cruz, Constitutional Law*, pp. 4-5].

b) Enacted (Conventional) or Evolved (Cumulative). A conventional constitution is enacted, formally struck off at a definite time and place following a conscious or deliberate effort taken by a constituent body or ruler; while a cumulative constitution is the result of political evolution, not inaugurated at any specific time but changing by accretion rather than by any systematic method [*Cruz, ibid.*, p. 5].

c) Rigid or Flexible. A 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, ibid.*, p. 5].

4. *Qualities of a good written Constitution:*

a) Broad. Not just because it provides for the organization of the entire government and covers all persons and things within the territory of

the State but because it must be comprehensive enough to provide for every contingency.

b) Brief. It must confine itself to basic principles to be implemented with legislative details more adjustable to change and easier to amend.

c) Definite. To prevent ambiguity in its provisions which could result in confusion and divisiveness among the people [*Cruz, ibid., pp. 5-6*],

5. *Essential parts of a good written Constitution:*

a) Constitution of Liberty. The series of prescriptions 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, e.g., *Art. III*.

b) 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, e.g., *Arts. VI, VII, VIII and IX*.

c) 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, e.g., *Art. XVII*.

6. *Interpretation/Construction of the Constitution.*

a) In *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, the Supreme Court made reference to the use of well-settled principles of constitutional construction, namely: First, verba leais.

i. e., whenever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have a common use. Second, where there is ambiguity, ratio legis et anima. The words of the Constitution should be interpreted in accordance with the intent of the framers. Thus, in *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, it was held that the Court in construing a Constitution should bear in mind the object sought to be accomplished and the evils sought to be prevented or remedied. A doubtful provision shall be examined in light of the history of the times and the conditions and circumstances under which the Constitution was framed. Third, ut maais valeat auam pereat. i.e., the Constitution has to be

interpreted as a whole. In *Civil Liberties Union*, it was declared that sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

b) If, however, the plain meaning of the word is not found to be clear, resort to other aids is available. Again in *Civil Liberties Union, supra.*, it was held that while it is permissible to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. We think it safer to construe the Constitution from what "appears upon its face". The proper interpretation, therefore, depends more on how it was understood by the people adopting it than in the framers' understanding thereof.

c) In case of doubt, the provisions should be considered selfexecuting; mandatory rather than directory; and prospective rather than retroactive.

d) Self-executing provisions. A provision which lays down a general principle is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies a sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing.

i) Thus, a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action [*Manila Prince Hotel v. GSIS, G.R. No. 122156, February 03, 1997*].

' ii) Section 26, Article II of the Constitution neither bestows a right nor elevates the privilege to the level of an enforceable right. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of this provision does not give rise to any cause of action before the courts [*Pamatong v. Comelec, G.R. No. 161872, April 13, 2004*].

B. Brief Constitutional History.**1. The Malolos Constitution.**

- a) The Philippine Revolution of 1896.
- b) Proclamation of Philippine independence, at Kawit, Cavite, on June 12, 1898.
- c) Revolutionary Congress convened at Barasoain Church, Malolos, Bulacan, on September 15, 1898. Three drafts were submitted, namely, the drafts of Pedro Paterno, Apolinario Mabini and Felipe Calderon.
- d) The Calderon proposal was reported to the Congress on October 8, 1898, and the Congress approved the proposed Constitution on November 29, 1898.
- e) President Emilio Aguinaldo approved the same on December 23, 1898; Congress ratified it on January 20, 1899.
- f) Aguinaldo promulgated the Constitution the following day, along with the establishment of the Philippine Republic on January 21, 1899.
- g) This was the first republican constitution in Asia, framed by a revolutionary convention which included 40 lawyers, 16 physicians, 5 pharmacists, 2 engineers and 1 priest. The Constitution recognized that sovereign power was vested in the people, provided for a parliamentary government, acknowledged separation of powers, and contained a bill of rights.

2. The American Regime and the Organic Acts

- a) The *Treaty of Paris of December 10, 1898*. The treaty of peace entered into between the US and Spain upon the cessation of the Spanish-American War. It provided, among others, for the cession of the Philippine Islands by Spain to the US.
- b) *US President McKinley's Instructions of April 7, 1900*, to transform the military into a civil government as rapidly as conditions would permit. On September 1, 1900, the authority to exercise that part of the military power of the US President which is legislative in character was transferred from the military government to the Philippine Commission [first, the Schurman Commission, then, the Taft Commission].

c) *The Spooner Amendment to the Army Appropriation Bill of March 2, 1901* provided that all military, civil and judicial powers necessary to govern the Philippine Islands shall be exercised in such manner x x x for the establishment of a civil government and for maintaining and protecting the inhabitants in the free enjoyment of their liberty, property and religion. On July 1, 1901, the Office of the Civil Governor was created, and the executive authority previously exercised by the military governor was transferred to the Civil Governor.

d) *The Philippine Bill of July 1, 1902* continued the existing civil government, with the co mmitmentfrom the US Congress to convene and organize in the Philippines a legislative body of their own representatives. On October 16,1907, the Philippine Assembly was convened to sit as the Lower House in a bicameral legislature, with the Philippine Commission as the Upper House.

e) *The Jones Law [Philippine Autonomy Act] of August 29, 1916.* It superseded the Spooner Amendment and the Philippine Bill of 1902. It was the principal organic act of the Philippines until November 15,1935, when the Philippine Commonwealth was inaugurated (under the 1935 Constitution). It contained a preamble, a bill of rights, provisions defining the organization and powers of the departments of government, provisions defining the electorate, and miscellaneous provisions on finance, franchises and salaries of important officials. Executive power was vested in the Governor General, legislative power in a bicameral legislature composed of the Senate and House of Representatives, and judicial power in the Supreme Court, the Courts of First Instance and inferior courts.

f) *The Tydings-McDuffie Act [Philippine Independence Act] of March 24, 1934* authorized the drafting of a Constitution for the Philippines, the establishment of a Commonwelath Government and, after ten years, independence.

3. The 1935 Constitution

a) Pursuant to the authority granted under the Tydings-McDuffie Law, the Philippine Legislature passed Act No. 4125 (May 26,1934) calling for the election of delegates to the Constitutional Convention.

b) Election of delegates: July 10, 1934; Constitutional Convention inaugural: July 30,1934.

c) Draft Constitution approved by the Constitutional Convention on February 8, 1935; brought to Washington on March 18, 1935, and on March

23, 1935, US President Franklin Delano Roosevelt certified that the draft constitution conformed substantially with the Tydings-McDuffie Law.

d) The Constitution was ratified in a plebiscite held on May 14, 1935.

e) The Philippine Commonwealth established under the Constitution was inaugurated on November 15, 1935; full independence was attained with the inauguration of the (Third) Philippine Republic on July 4, 1946.

f) The Constitution was amended in 1939: Ordinance appended to the Constitution, in accordance with the Tydings-Kociałkowski Act of August 7, 1939 [Resolution of Congress: September 15, 1939; Plebiscite: October 24, 1939]

g) It was amended again in 1940: Changed President's and Vice President's term from six to four years, but no person shall serve as President for more than 8 years; changed the unicameral to a bicameral legislature; established an independent Commission on Elections [Resolution: April 11, 1940; Plebiscite: June 18, 1940]

i) Another amendment was adopted in 1947: Parity Amendment, effective July 4, 1949, granting to Americans, for a period of twenty-five years, the same privileges as Filipinos in the utilization and exploitation of natural resources in the Philippines [Resolution: September 18, 1946; Plebiscite: March 11, 1947], See: *Mabanag v. Lopez Vito*, 78 Phil. 1.

4. The Japanese (Belligerent) Occupation

a) With the occupation of Manila, the Commander in Chief of the Japanese Forces proclaimed, on January 2, 1942, the military administration over the territory occupied by the army, and ordered that "all the laws now in force in the Commonwealth, as well as executive and judicial institutions shall continue to be effective for the time being as in the past", and "all public officials shall remain in their present posts and carry on faithfully their duties as before".

b) Order No. 1 of the Japanese Commander in Chief, on January 23, 1942, organized the Philippine Executive Commission.

c) Executive Orders Nos. 1 and 4, dated January 30 and February 6, 1942, respectively, continued the Supreme Court, the Court of Appeals,

the Courts of First Instance and Justices of the Peace Courts, with the same jurisdiction, in conformity with later instructions given by the Commander in Chief of the Japanese Imperial Army in Order No. 3, dated February 20, 1942.

d) October 14, 1943, the (Second) Philippine Republic was inaugurated, with Jose P. Laurel as President.

5. The 1973 Constitution

a) Resolution of Both Houses (RBH) No. 1, March 16, 1967, increasing the membership of the House of Representatives from 120 to 180

b) RBH No. 2, March 16, 1967, calling for a Constitutional Convention to revise the 1935 Constitution

c) RBH No. 3, March 16, 1967, allowing members of Congress to sit as delegates in the Constitutional Convention without forfeiting their seats in Congress

d) RBH 1 and RBH 3 were submitted to the people in a plebiscite simultaneously with local elections in November 1967, but both were rejected by the people.

e) RBH No. 4, June 17, 1969, amending RBH No. 2, and authorizing that specific apportionment of delegates to the Constitutional Convention and other details relating to the election of delegates be embodied in an implementing legislation

f) Republic Act No. 6132: Constitutional Convention Act of 1970.

i) See *Imborg v. Comelec*, 35 SCRA 28, where the constitutionality of the RA 6132 was challenged because it had to do with the calling of a Constitutional Convention but was not passed by % of all the members of the Senate and the House of Representatives, voting separately. The Supreme Court upheld the validity of the law, declaring that after Congress had exercised its *constituent power* by adopting RBH 2 and RBH 4, with the requisite % vote as required by the 1935 Constitution, it may, by simply exercising *legislative power*, pass a law providing for the details for the implementation of the resolutions passed in the exercise of its constituent power.

g) Election of delegates: November 10, 1970; Constitutional Convention was inaugurated on June 1, 1971.

i) Attempt of the Constitutional Convention to submit for ratification one resolution (reducing the voting age from 21 to 18) in a plebiscite to coincide with the 1971 local elections was declared unconstitutional by the Supreme Court in *Tolentino v. Comelec*, 41 SCRA 702. The Court held that when a Constitutional Convention is called for the purpose of revising the Constitution, it may not submit for ratification "piecemeal amendments" because the 1935 Constitution speaks of submission of the proposed amendments in "an election" (in the singular), and also because to allow the submission would deprive the people of a "proper frame of reference".

h) Presidential Proclamation No. 1081, on September 21, 1972: Declaration of martial law by President Ferdinand E. Marcos.

i) Constitutional Convention approved the draft Constitution on November 29, 1972

j) On November 30, 1972, President Marcos issued a decree setting the plebiscite for the ratification of the new Constitution on January 15, 1973; on December 17, 1972, issued an order suspending the effects of Presidential Proclamation 1081 in order to allow free and open debate on the proposed Constitution.

. i) *Planas v. Comelec*, 49 SCRA 105, and companion cases (collectively known as the *Plebiscite Cases*) sought to prohibit the holding of the plebiscite. The cases were eventually dismissed for being moot and academic when President Marcos issued Presidential Proclamation 1102, declaring that the Constitution had been ratified and has come into force and effect.

k) On December 23, 1972, President Marcos announced the postponement of the plebiscite, but it was only on January 7, 1973, that General Order No. 20 was issued, directing that the plebiscite scheduled on January 15, 1973, be postponed until further notice, and withdrawing the order of December 17, 1972, suspending the effects of Pres. Proclamation 1081 which allowed free and open debate on the proposed Constitution.

l) On December 31, 1972, Marcos issued Presidential Decree No. 86, organizing the Citizens Assemblies to be consulted on certain public issues; and on January 5, 1973, issued Presidential Decree No. 86-A, calling the Citizens Assemblies to meet on January 10-15, 1973, to vote on certain questions, among them: "Do you approve of the new Constitution?" and "Do you still want a plebiscite to be called to ratify the new Constitution?"

m) On January 17, 1973, President Marcos issued Presidential Proclamation No. 1102, declaring that the new Constitution had been ratified by the Citizens Assemblies, and "has thereby come into force and effect".

i) The validity of the ratification of the 1973 Constitution was challenged in *Javellana v. Executive Secretary*, 50 SCRA 30, and companion cases (collectively known as the *Ratification Cases*). The basic issues and the votes of the SC justices were:

- (1) Whether the validity of Proclamation 1102 is a political or a justiciable question - Six justices said it is justiciable, three said it is political, and one justice qualified his vote.
- (2) Whether the new Constitution was validly ratified (with substantial if not strict compliance) conformably with the 1935 Constitution - Six justices said no, three said there was substantial compliance, and one qualified his vote.
- (3) Whether the people had acquiesced in the new Constitution (with or without valid ratification) - Four justices said the people had already accepted the new Constitution, two said that there can be no free expression by the people qualified to vote of their acceptance or repudiation of the proposed Constitution under martial law, one said he is not prepared to state that a new Constitution once accepted by the people must be accorded recognition independently of valid ratification, and three expressed their lack of knowledge or competence to rule on the question because under a regime of martial law with the free expression of opinions restricted, they have no means of knowing, to the point of judicial certainty, whether the people have accepted the Constitution.
- (4) Whether the petitioners are entitled to relief - Six justices voted to dismiss the petitions, while four were for giving due course to the petitions.
- (5) Whether the new Constitution is already in force - Four said yes by virtue of the people's acceptance of the same, four said they could not with judicial certainty whether or not the people had accepted the Constitution, and two declared that the new Constitution is not in force, "with the result that there are not enough votes to declare that the new Constitution is not in force".

The SC decision concluded: "Accordingly, by virtue of the majority of six votes x x x. with four dissenting votes x x x all of the aforementioned cases are hereby dismissed. This being the vote of the majority, there is no further judicial obstacle to the new Constitution being considered in force and effect."

n) The 1973 Constitution was amended in 1976: Package often (10) amendments, proposed by Marcos on September 2, 1976, without specifying the particular provisions being changed. This package contained the infamous Amendment No. 6. The amendments were ratified in a plebiscite held on October 16, 1976.

i) In *Sanidad v. Comelec*, 73 SCRA 333, where the authority of President Marcos to propose amendments to the Constitution was challenged,

the high tribunal said: "If the President has been legitimately discharging the legislative powers of the interim (National) Assembly (which was never convened), there is no reason why he cannot validly discharge the functions of the Assembly to propose amendments to the Constitution, which is but adjunct, though peculiar, to its gross legislative power x x x (W)ith the interim National Assembly not convened and only the President and the Supreme Court in operation, the urge of absolute necessity renders it imperative upon the President to act as agent for and in behalf of the people to propose amendments to the Constitution."

- o) The Constitution was amended again on January 30, 1980:
Restored original retirement age of judges to 70 years of age
- p) Another amendment was adopted on April 7, 1981: Restored the presidential system, while retaining certain features of the parliamentary system; granted natural-born Filipinos who had been naturalized in a foreign country the right to own a limited area of residential land in the Philippines
- q) Still another amendment was made on January 27, 1984: Provided for new rules on presidential succession, replaced the Executive Committee with a revived Office of the Vice President, and changed the composition of the Batasan Pambansa
- r) Snap presidential election of 1986.
 - i) A petition to prohibit the holding of the snap election was filed with the SC in *Philippine Bar Association v. Comelec*, 140 SCRA 455. But the petition was dismissed because considerations other than legal had already set in, the candidates were in the thick of the campaign, and the people were already looking forward to the election.
- s) February 22-25, 1986: EDSA People's Revolution. See: *Lawyers League for a Better Philippines v. Corazon Aquino*, G.R. No. 73748, May 22, 1986, where the Supreme Court held that the Cory Aquino government was not only a *de facto* but a *de jure* government.

C. The 1987 Constitution.

1. Proclamation of the Freedom Constitution

- a) *Proclamation No. 1*, February 25, 1986, announcing that she (Corazon Aquino) and Vice President Laurel were assuming power.

- b) *Executive Order No. 1* [February 28, 1986]
- c) *Proclamation 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 of the 1973 Constitution, contained additional articles on the executive department, on government reorganization, and on existing laws. It also provided for the calling of a Constitutional Commission to be composed of 30-50 members, to draft a new Constitution. See: *Lawyers League for a Better Philippines v. Aquino*, G.R. No. 73748, May 22, 1986; *In Re: Saturnino Bermudez*, 145 SCRA 160.
 - i) As stated in Proclamation No. 3, the EDSA revolution was “done in defiance of the 1973 Constitution”. The resulting government was indisputably a revolutionary government bound by no constitution or legal limitations except treaty obligations that the revolutionary government, as the *de jure* government in the Philippines, assumed under international law [*Republic v. Sandiganbayan*, 407 SCRA 10 (2003)].
 - ii) During the interregnum, after the actual take-over of power by the revolutionary government (on February 25, 1986) up to March 24, 1986 (immediately before the adoption of the Provisional Constitution), the directives and orders of the revolutionary government were the supreme law because no constitution limited the extent and scope of such directives and orders. With the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government. Thus, during this interregnum, a person could not invoke an exclusionary right under a Bill of Rights because there was neither a Constitution nor a Bill of Rights [*Republic v. Sandiganbayan*, 407 SCRA 10].

2. Adoption of the Constitution

- a) *Proclamation No. 9*, creating the Constitutional Commission of 50 members.
- b) Approval of 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, the date of the plebiscite when the people ratified the Constitution [*De Leon v. Esguerra*, 153 SCRA 602].

D. Amendment.

1. Amendment vs. Revision.

a) *Lambino v. Comelec*, G.R. No. 174153, October 25, 2006, enumerates the distinctions between revision and amendment, as follows: *Revision* broadly implies a change that alters a basic principle in the Constitution, like altering the principle of separation of powers or the system of checks and balances. There is also revision if the change alters the substantial entirety of the Constitution. On the other hand, *amendment* broadly refers to a change that adds, reduces, deletes, without altering the basic principle involved. *Revision* generally affects several provisions of the Constitution; while *amendment* generally affects only the specific provision being amended.

i) In determining whether the Lambino proposal involves an amendment or a revision, the Court considered the *two-part test*. First, the *quantitative test* asks whether the proposed change is so extensive in its provisions as to change directly the “substance entirety” of the Constitution by the deletion or alteration of numerous provisions. The court examines only the number of provisions affected and does not consider the degree of the change. Second, the *qualitative test*, which inquires into the qualitative effects of the proposed change in the Constitution. The main inquiry is whether the change will “accomplish such far-reaching changes in the nature of our basic governmental plan as to amount to a revision”.

ii) The Lambino proposal constituted a revision, not simply an amendment, of the Constitution, because it involved a change in the form of government, from presidential to parliamentary, and a shift from the present bicameral to a unicameral legislature.²³

2. *Constituent v. Legislative Power.* See *Imbung v. Comelec*, 35 SCRA 28, where the Supreme Court declared R.A. 6132 constitutional, as it merely provided the details for the implementation of Resolution of Both Houses (RBH) Nos. 2 and 4.

3. Steps in the amendatory process:

a) Proposal [Secs. 1-3, Art. XVII]. The adoption of the suggested change in the Constitution. A proposed amendment may come from:

i.) *Congress, by a vote of % of all its members.* Majority of authorities opine that this is to be understood as $\frac{3}{4}$ of the Senate and $\frac{3}{4}$ of the House of Representatives.

ia) See *Occena v. Comelec*, 104 SCRA 1, which is authority for the principle that the choice of method of proposal, i.e., whether made directly by Congress or through a Constitutional Convention, is within the full discretion of the legislature.

ii) *Constitutional Convention*, which may be called into existence either by a 2/3 vote of all the members of Congress, or (if such vote is not obtained) by a majority vote of all the members of Congress with the question of whether or not to call a Convention to be resolved by the people in a plebiscite [Sec. 3, Art. XVII].

iiia) Three Theories on the position of a Constitutional Convention vis-a-vis the regular departments of government: (1) Theory of Conventional Sovereignty [*Loomis v. Jackson*, 6 W. Va. 613]; (2) Convention is inferior to the other departments [*Wood's Appeal*, 79 Pa. 59]; (3) Independent of and co-equal to the other departments [*Mabanag v. Lopez Vito*, 78 Phil. 1],

iii) *People, through the power of initiative* [Sec. 2, Art. XVII]. *Requisite:* A petition of at least 12% of the total number of registered voters, of which every legislative district must be represented by at least 3% of the registered voters therein.

iiia) *Limitation:* No amendment in this manner shall be authorized within five years following the ratification of this Constitution nor more often than once every five years thereafter.

iiib) Under Republic Act No. 6735 [*An Act Providing for a System of Initiative and Referendum*], approved on August 4, 1989, *initiative* is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. There are three systems of initiative, namely: *initiative on the Constitution* which refers to a petition proposing amendments to the Constitution; *initiative on statutes* which refers to a petition proposing to enact a national legislation; and *initiative on local legislation* which refers to a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance [Sec. 2(a), R.A. 6735]. *Indirect Initiative* is exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action [Sec. 2(b) R.A. 6735].

iiib) In the *Resolution* (on the Motion for Reconsideration) in *Lambino v. Comelec*, the Court noted that the majority of the justices had voted to declare RA 6735 sufficient and adequate for a people's initiative. *Lambino* thus effectively abandoned the ruling in *Defensor-Santiago v. Comelec, G.R. No. 127325, March 19, 1997*, where the Supreme Court declared R.A. 6735 inadequate to cover the system of initiative to amend the Constitution.

iiic) *Procedure*. The essence of amendments directly proposed by the people through initiative upon a petition is that the entire proposal on its face is a petition of the people. Thus, two essential elements must be present: (1) *The people must author and sign the entire proposal; no agent or representative can sign in their behalf.* (2) *As an initiative upon a petition, the proposal must be embodied in the petition.* The rationale for these requisites is that the signature requirement would be meaningless if the person supplying the signature has not first seen what it is that he is signing, and more importantly, a loose interpretation of the subscription requirement would pose a significant potential for fraud. In *Lambino*, the great majority of the 6.3 million people who signed the signature sheets did not see the full text of the proposed changes before signing; they were not apprised of the nature and effect of the proposed amendments. Failure to comply with these requirements was fatal to the validity of the initiative petition [*Lambino v. Comelec, supra.*].

iiid) *People's initiative applies only to an amendment, not a revision, of the Constitution.* A people's initiative can only propose amendments to the Constitution, inasmuch as the Constitution itself limits initiatives to amendments, as shown by the deliberations of the Constitutional Commission. The *Lambino initiative* constituted a revision because it proposed to change the form of government from presidential to parliamentary and the bicameral to a unicameral legislature. Thus, the people's initiative as a mode to effect these proposed amendments was invalid [*Lambino v. Comelec, supra.*].

b) Ratification [Sec. 4, Art. XVII], The proposed amendment shall become part of the Constitution when ratified by a majority of the votes cast in a plebiscite held not earlier than 60 nor later than 90 days after the approval of the proposal by Congress or the Constitutional Convention, or after the certification by the Commission on Elections of the sufficiency of the petition for initiative under Sec. 2, Art. XVII.¹⁹

i) *Doctrine of proper submission.* Because the Constitution itself prescribes the time frame within which the plebiscite is to be held, there can no longer be a question on whether the time given to the people to determine the merits and demerits of the proposed amendment is adequate. Other related principles:

ia) The plebiscite may be held on the same day as regular elections [*Gonzales v. Comelec*, 21 SCRA 774; *Occena v. Comelec*, 104 SCRA 1; *Almario v. Alba*, 127 SCRA 69].

ib) The use of the word "election" in the singular meant that the entire Constitution must be submitted for ratification at one plebiscite only; furthermore, the people have to be given a "proper frame of reference" in arriving at their decision. Thus, submission for ratification of piece-meal amendments by the Constitutional Convention (which is tasked to revise the Constitution) was disallowed since the people had, at that time, no idea yet of what the rest of the revised Constitution would be [*Tolentino v. Comelec*, 41 SCRA 702]. ■

4. Judicial Review of Amendments. The question is now regarded as subject to judicial review, because invariably, the issue will boil down to whether or not the constitutional provisions had been followed [*Sanidad v. Comelec*, 78 SCRA 333; *Javellana v. Executive Secretary*, 50 SCRA 50],

E. The Power of Judicial Review.

1. Judicial Review: The power of the courts to test the validity of executive and legislative acts in light of their conformity with the Constitution. This is not an assertion of superiority by the courts over the other departments, but merely an expression of the supremacy of the Constitution [*Angara v. Electoral Commission*, 63 Phil. 139]. The duty remains to assure that the supremacy of the Constitution is upheld [*Aquino v. Enrile*, 59 SCRA 183]. The power is inherent in the Judicial Department, by virtue of the doctrine of separation of powers.

a) That duty is part of the judicial power vested in the courts by an express grant under Sec. 1, Art. VIII of the Constitution which states: "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 Government" [*Bondoc v. Pineda*, 201 SCRA 792].

b) Explicit constitutional recognition of the power is also found in Sec. 4(2), Art. VIII, which provides, among others: "x x x all cases involving the constitutionality of a treaty, international or executive agreement, or law which shall be heard by the Supreme Court 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 deliberation on the issues in the case and voted thereon".

2. Who may exercise the power. Sec. 4(2), Art. VIII of the Constitution recognizes the power of the Supreme Court to decide constitutional questions. On the issue of whether the power can be exercised by lower courts, see:

a) Sec. 5(2), Art. VIII, which prescribes the constitutional appellate jurisdiction of the Supreme Court, and implicitly recognizes the authority of lower courts to decide questions involving the constitutionality of laws, treaties, international agreements, etc.. Thus, in *Ynot v. Intermediate Appellate Court*, 148 SCRA 659, the Supreme Court said that the lower courts should not shy away from the task of deciding constitutional questions when properly raised before them. However, in *Commissioner of Internal Revenue v. Court of Tax Appeals*, 195 SCRA 444, it was held that the fact that the constitutional question was properly raised by a party is not alone sufficient for the respondent court to pass upon the issue of constitutionality; every court should approach a constitutional question with grave care and considerable caution.

b) In *Mirasol v. Court of Appeals*, G.R. No. 128448, February 1, 2001, it was held that the Constitution vests the power of judicial review not only in the Supreme Court but also in Regional Trial Courts (RTC). Furthermore, BP. 129 grants RTCs the authority to rule on the conformity of laws and treaties with the Constitution. However, in all actions assailing the validity of a statute, treaty, presidential decree, order or proclamation — and not just in actions involving declaratory relief and similar remedies — notice to the Solicitor General is mandatory, as required in Sec. 3, Rule 64 of the Rules of Court. The purpose of this mandatory notice is to enable the Solicitor General to decide whether or not his intervention in the action is necessary. To deny the Solicitor General such notice would be tantamount to depriving him of his day in court.

3. Functions of Judicial Review

- a) Checking
- b) Legitimating
- c) Symbolic [See: *Salonga v. Pano*, 134 SCRA 438]

4. Requisites of Judicial Review/Inquiry:

a) Actual case or controversy. A conflict of legal rights, an assertion of opposite legal claims which can be resolved on the basis of existing law and jurisprudence [*Guingona v. Court of Appeals*, G. R. No. 125532, July 10, 1998],

In *John Hay People's Alternative Coalition v. Lim*, G.R. No. 119775, October 24, 2003, it was held that the controversy must be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests. It is not enough that the controversy exists at the outset; to qualify for adjudication, it is necessary that the actual controversy be extant at all stages of the review, not merely at the time the complaint is filed [*Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008)].

i) A request for an advisory opinion is not an actual case or controversy. But an action for declaratory relief is proper for judicial determination. See *PACU v. Secretary of Education*, 91 Phil 806; *Dumlao v. Comelec*, 95 SCRA 392; *Perez v. Provincial Board*, 113 SCRA 187.

ii) The issues raised in the case must not be moot and academic, or because of subsequent developments, have become moot and academic. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events [*Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004] so that a declaration thereon would be of no practical use or value [*Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132795, March 10, 2004]. Generally, courts decline jurisdiction over such case [*Royal Cargo Corporation v. Civil Aeronautics Board*, G.R. No. 10305556, January 26, 2004] or dismiss it on ground of mootness [*Lacson v. Perez*, G.R. No. 147780, May 10, 2001].

iia) Thus, in *Enrile v. Senate Electoral Tribunal and Pimentel*, G.R. No. 132986, May 19, 2004, because the term of the contested position had expired on June 30, 1998, the electoral contest had become moot and academic, and thus, there was no occasion for judicial review. In *Lacson v. Perez*, G.R. No. 147780, May 10, 2001, where cases were filed questioning the declaration by President Gloria Macapagal Arroyo of a "state of rebellion" in Metro Manila (under General Order No. 1), the Supreme Court dismissed the petitions because on May 6, 2001, the President ordered the lifting of the "state of rebellion", and, thus, the issue raised in the petitions had become moot and academic. Likewise, in *Gonzales v. Narvaza*, G.R. No. 140835, August 14, 2000, where the constitutionality of the creation of the Preparatory Commission on Constitutional Reform (PCCR) was questioned, the Court dismissed the petition because by then the PCCR had ceased to exist having finished its work and having submitted its recommendations to President Estrada. Subsequent events had overtaken the petition and the Court had nothing left to rule upon. Similarly, in *Guingona v. Court of Appeals*, G.R. No. 125532, July 10, 1998, the Court declared that since witness Potenciano Roque had already been admitted into the Witness Protection Program and had actually finished testifying, the petition contesting the side opinion of the

Court of Appeals that the admission of Roque into the program could be made only if his testimony is substantially corroborated on material points, was held to have raised an issue which had become moot and academic. The same conclusion was reached in *Atlas Fertilizer v. Secretary, Department of Agrarian Reform*, G.R. No. 93100, June 19, 1997, because Congress had already passed amendatory laws excluding fishponds and prawn farms from the coverage of CARL, the issue on the constitutionality of the assailed provisions had become moot and academic, and therefore, not ripe for judicial review.

iib) In *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, the Supreme Court held that President Arroyo's issuance of Presidential Proclamation 1021 (recalling Proclamation No. 1017 which declared a "state of emergency") did not render the petitions moot and academic. There remained the need to determine the validity of Proclamation No. 1017 and G.O. No. 5, because during the eight days that PP 1017 was operative, the police officers, according to petitioners, committed illegal acts in implementing it and only in resolving the issue can it be determined if the acts committed by the implementing officers were justified.

iii) However, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. In *David v. Macapagal-Arroyo*, *supra*, it was held that courts will still decide cases otherwise moot and academic if: (a) there is a grave violation of the Constitution [*Province of Batangas v. Romulo*, *supra*.]; (b) there is an exceptional character of the situation and paramount public interest is involved [*Lacson v. Perez*, *supra*.] (c) the constitutional issues raised require formulation of controlling principles to guide the bench, the bar and the public [*Salonga v. Pano*, *supra*.]; and (d) the case is capable of repetition yet evasive of review [*Saniakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004].

iiia) Thus, the court decided *Alunan III v. Mirasol*, G.R. No. 108399, July 31, 1997, because it raised a question, otherwise moot, but "capable of repetition yet evading review". In a U.S. case, it was held that the application of this principle presupposes that [1] the life of the controversy is too short to be fully litigated prior to its termination, and [2] that there is a reasonable expectation that the plaintiff will again be subjected to the same problem. *Saniakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004, and companion cases, relative to the validity of the declaration by President Arroyo of a "state of rebellion" after the Oakwood incident, was similarly decided on that ground.

iiib) The Court also exercised the power of judicial review even when the issue had become moot and academic in *Salonga v. Pano*, 134

SCRA 438, where it was held that the Court had the duty to formulate guiding and controlling constitutional principles, precepts, doctrines or rules, and the symbolic function to educate the bench and the bar on the extent of protection given by the constitutional guarantees. Likewise, in *Acop v. Guingona*, G.R. No. 134855, July 2, 2002, although the issue had become moot and academic because the policemen (alleged whistle-blowers) had already been removed from the Witness Protection Program, the Court still decided the case for the future guidance of the bench and the bar on the application of RA 6981, and for the proper disposition of the issue on whether the two policemen should return whatever monetary benefits they may have received under the program.

iv) *Some cases showing the existence of an actual case or controversy:* In *Tanadav. Angara*, 272 SCRA 18, on the challenge posed by the petitioners that the concurrence of the Senate in the WTO Agreement violated the Constitution, particularly Sec. 19, Art. II (which mandates the development of a self-reliant and independent national economy), the Supreme Court held that this was a justiciable controversy, because where an action of the Legislature is alleged to have infringed the Constitution, it becomes not only the right but the duty of the Judiciary to settle the dispute. In *Ople v. Torres*, 293 SCRA 141, it was held that the petition's ripeness for adjudication was not affected by the fact that the implementing rules of Administrative Order No. 308 (Adopting a National Computerized Identification Reference System) had not yet been promulgated, because Senator Ople assailed AO 308 as invalid *per se* and infirm on its face; thus, his action was not premature. After all, the implementing rules could not cure the fatal defects of the Administrative Order.

v) *Some cases held not ripe for judicial determination.* In *Montesclaros v. Comelec*, G.R. No. 152295, July 9, 2002, it was held that a proposed bill is not subject to judicial review, because it creates no rights and imposes no duties enforceable by the courts. In *Mariano v. Comelec*, 242 SCRA 211, the petition to declare RA 7854 (converting the Municipality of Makati into a Highly Urbanized City) as unconstitutional was dismissed, because it was premised on many contingent events the happening of which was uncertain; petitioner, thus, posed a hypothetical issue which had not yet ripened into an actual case or controversy. In *Fernandez v. Torres*, 215 SCRA 489, for failure of the petitioners to allege that they had applied for exemption, or that it would have been futile to apply for exemption, from DOLE Circular No. 1-91 (banning deployment outside the Philippines of Filipino performing artists below 23 years of age), the Supreme Court dismissed the petition as having been prematurely filed; thus, there is no actual case or controversy. Similarly, in *Philippine Press Institute v. Comelec*, 244 SCRA 272, the Court noted that PPI failed to allege any specific affirmative action on the part of

the Comelec designed to enforce or implement Sec. 8, Res. No. 2772; thus, the case was deemed not ripe for judicial review for lack of an actual case or controversy. In *Macasiano v. National Housing Authority*, 224 SCRA 236, because the petitioner had not shown that he was prevented from performing his duties as Consultant of the DPWH by the challenged provisions of RA 7279, it was held that there was no actual case or controversy. In *Board of Optometry v. Colet*, 260 SCRA 88, inasmuch as respondents Optometry Practitioners Association of the Philippines, Cenvis Optometrist Association, et al., failed to show that they are juridical entities (as certified by the Securities and Exchange Commission), they cannot be deemed real parties in interest in whose name the action may be prosecuted. Neither can some individuals be considered parties in representation of the optometrists, as their names do not appear in the registry list of the Board. Thus, there is no actual case or controversy yet, because an actual case or controversy means an existing case or controversy appropriate or ripe for determination, not conjectural or anticipatory.

b) The constitutional question must be raised by the proper party. A proper party is one who has sustained or is in imminent danger of sustaining an injury as a result of the act complained of. To be a proper party, one must have "legal standing", or *locus standi*.

i) *Locus standi* is defined as a right of appearance in a court of justice on a given question [*Black's Law Dictionary*, 6th ed., 1991]. In private suits, standing is governed by the real parties in interest rule, as contained in Sec. 2, Rule 3, 1997 Rules of Civil Procedure. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit [*Salonga v. Warner Barnes*, 88 Phil. 125]. The difficulty of determining *locus standi* arises in public suits where the plaintiff asserts a public right in assailing the validity of an official act, and he does so as a representative of the general public. To establish legal standing, he has to make out a sufficient interest in the vindication of the public order and securing relief as a citizen or taxpayer [*David v. Macapagal-Arroyo*, *supra*].

ia) To determine legal standing, the Court, in *People v. Vera*, 65 Phil. 56, adopted the *direct injury test*, which states that a person who impugns 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. In *IBP v. Zamora*, G.R. No. 141284, August 15, 2000, it was clarified that the term "interest" means a material interest, an interest in issue affected by the challenged official act, as distinguished from mere interest in the question involved, or a mere incidental interest.

ib) However, in numerous decisions particularly in recent ones, the Supreme Court has adopted a liberal attitude and recognized the legal standing of petitioners who have invoked a public right allegedly breached by a governmental act. In *David v. Macapagal-Arroyo*, the Supreme Court summarized its earlier rulings and declared that petitioners may be accorded standing to sue provided that the following requirements are met: (1) The case involves constitutional issues; (2) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional (the prevailing doctrine is that taxpayers may question contracts entered into by the national government or by government-owned or -controlled corporations allegedly in contravention of law [*Abaya v. Ebdane*, 515 SCRA 720]); (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; and (5) For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators.

ic) To this enumeration may be added the ruling in *People v. Vera, supra.*, where the Supreme Court declared that the Government of the Philippines is a proper party to question the validity of its own laws, because more than any one, it should be concerned with the constitutionality of its acts. In that case, it was held that the government has substantial interest in having the Probation Law declared as unconstitutional, because more than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.

ii) *Illustrative cases: proper party.* In *David v. Macapagal Arroyo*, the Court held that all the petitioners were proper parties. David and Llamas, as they alleged “direct injury” from the “illegal arrest” and “unlawful search” committed by the police officers in the enforcement of PP 1017; the opposition Congressmen who alleged usurpation of legislative powers by the President; the Alternative Law Group, under the liberality rule as the issue involved a public right; KMU as an organization for asserting the rights of their members; and the other petitioners, because of the transcendental importance of the issues raised. In *Chavez v. Gonzales, G.R. No. 168338, February 15, 2008*, even as petitioner Chavez had not met the requisite legal standing, the Court took cognizance of the case consistent with the principle that it will not wield procedural barriers as impediments to its addressing and resolving serious legal questions that greatly impact on public interest. In *Senate v. Executive Secretary, G.R. No. 169777, April 20, 2006*, on the issue of the validity of Calibrated Preempted Response (CPR), Bayan Muna was held to have locus standi because it is a party-list group with three seats in the House of Representatives entitled to participate in the legislative process;

the three Bayan Muna representatives, on the basis of their allegation that their rights and duties as members of the House of Representatives had been infringed; and Chavez, for having asserted a public right, his being a citizen is sufficient. In **Akbayan v. Aquino, G.R. No. 170516, July 16, 2008**, the Court declared that non-governmental organizations, Congress persons, citizens and taxpayers have legal standing to file the petition for mandamus to compel the respondents to produce a copy of the Japan Philippines Economic Package Agreement (JPEPA), as the petition is anchored upon the right of the people to information on matters of public concern which is a public right. In **Anak Mindanao Party List Group (AMIN) v. Executive Secretary, G.R. No. 166052, August 29, 2007**, it was held that AMIN, as member of Congress, had legal standing to institute the suit questioning the validity of Executive Order No. 364 placing the National Commission on Indigenous People (NCIP under the supervision and control of the Department of Agrarian Reform.

iiia) In **Commission on Human Rights Employees Association v. Commission on Human Rights, G.R. No. 155336, November 25, 2004**, the petitioner, an association consisting of rank-and-file employees in the Commission on Human Rights, protests that the upgrading and collapsing of positions benefited only a select few in the upper level positions in the Commission, resulting in the demoralization of rank-and-file employees. This, according to the Supreme Court, meets the injury test. In **Agan, Jr. v. Philippine International Air Terminals Co., Inc. (PIATCO), G.R. No. 155001, May 5, 2003**, the petitioners, NAIA concessionaires and service contractors, were declared proper parties because they stood to lose their source of livelihood by reason of the implementation of the PIATCO contracts. The financial prejudice brought about by the said PIATCO contracts on them are legitimate interests sufficient to confer on them the requisite standing to file the instant petitions. The Province of Batangas was held to have legal standing to question the validity of the provisions of the General Appropriation Act and the guidelines prescribed by the Oversight Committee on Devolution relative to projects funded from the internal revenue allotment, inasmuch as the petitioner had an interest in its share in the national taxes [**Province of Batangas v. Romulo, supra.**].

iiib) In **Ople v. Torres, 293 SCRA 141**, the Supreme Court held that Senator Bias Ople was a proper party to question the constitutionality of AO 308 in his capacity as Senator, as taxpayer and as member of the GSIS. As Senator, he had the requisite standing to bring suit assailing the issuance of the AO as a usurpation of legislative power; as taxpayer and GSIS member, he could impugn the legality of the misalignment of public funds and the misuse of the GSIS to implement the AO. In **Philconsa v. Enriquez, 235 SCRA 506**, it was held that where the Presidential veto is claimed to have been made in

excess of authority, the issue of impermissible intrusion by the Executive into the domain of the Legislature arises. To the extent that the power of Congress is impaired, so is the power of each member thereof. An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury which can be questioned by any member of Congress. The same ruling was made in ***Del Mar v. PAGCOR, G.R. No. 138298, November 29, 2000***, where members of Congress sought to prevent PAGCOR from managing, maintaining and operating *jai alai*. This was reiterated in ***Jaworski v. PAGCOR, 419 SCRA 420***, where Senator Jaworski was held to have legal standing to question the operation of a *jai alai* fronton by PAGCOR on the ground that it needs a legislative franchise. A similar conclusion was reached in ***Sanlakas v. Executive Secretary, supra***, where Representatives Suplico, et al., and Senator Pimentel were considered as proper parties to contest the constitutionality of President Arroyo's proclamation of a "state of rebellion" after the Oakwood incident.

iic) In ***Bagatsing v. Committee on Privatization, 246 SCRA 334***, even as it was held that the petitioners, as members of Congress, did not have *locus standi* to question the bidding and sale of the 40% block of Petron shares to Aramco in the absence of a claim that the contract in question violated the rights of petitioners or impermissibly intruded into the domain of the Legislature, nonetheless, they were allowed to bring action in their capacity as taxpayers under the doctrine laid down in ***Kilosbayan v. Guingona, infra***. In ***KMU Labor Center v. Garcia, 239 SCRA 386***, the Court held that KMU members who avail of the use of buses, trains and jeepneys every day are directly affected by the burdensome cost of arbitrary increases in passenger fares." They are, therefore, proper parties to contest the validity of DOTC memoranda, etc., authorizing provincial bus and jeepney operators to increase or decrease transportation fares. In the same vein, an association of registered recruitment agencies had legal standing to question the constitutionality of the Migrant Workers and Overseas Filipino Act, in order to assert the concern of its constituents.

iii) ***Illustrative cases; not proper parties.*** In ***Automotive Industry Workers Alliance v. Romulo, G.R. No. 157509, January 18, 2005***, the petitioners, composed often labor unions, seeking the declaration of unconstitutionality of EO 185, dated March 10, 2003, which transfer administrative supervision over the NLRC from the NLRC Chairman to the Secretary of Labor, could not show that their members sustained or were in danger of sustaining injury from EO 185. This was because the authority conferred upon the Secretary of Labor did not extend to the power to review, revise, reverse or modify the decisions of the NLRC in the exercise of its quasi-judicial functions. In ***Sanlakas v. Executive Secretary, supra***, petitioners Sanlakas and Partido ng Manggagawa

were declared to be without legal standing. Citing *Lacson v. Perez*, G.R. No. 147780, May 10, 2001, the Supreme Court said that petitioners are juridical persons not subject to arrest. Even if they were “people’s organizations”, they still would have no requisite personality, as held in *Kilosbayan v. Morato, infra.*. Neither were petitioners Social Justice Society Officers/Members, in their capacity as taxpayers and citizens, proper parties. In *Domingo v. Carague*, G.R. No. 161065, April 15, 2005, the petitioners failed to show any direct and personal interest in the COA Organizational Restructuring Plan; there was no indication that they have sustained or are in imminent danger of sustaining some direct injury as a result of its implementation; and they admitted that “they do not seek any affirmative relief nor impute any improper or improvident act against the respondents”. Clearly, then, they do not have any legal standing to file the instant suit. In *Cutaran v. DENR*, G.R. No. 134958, January 31, 2001, the Supreme Court refused to give due course to a petition seeking to enjoin the DENR from processing the ancestral land claim of private respondent over a property located at Camp John Hay reservation in Baguio, on the ground that there is no actual or imminent violation of the petitioner’s asserted right. Courts will not touch an issue involving the validity of a law unless there has been a governmental act accomplished or performed that has a direct adverse effect on the legal right of the person contesting its legality. Until such time, petitioners are simply speculating that they might be evicted from the premises at a future time. In *Joya v. PCGG*, 225 SCRA 568, the petitioners having failed to show that they were the owners of the masters’ paintings and antique silverware, were not deemed proper parties to enjoin the PCGG from selling at public auction the aforesaid items seized from Malacanang and the Metropolitan Museum as allegedly part of the ill-gotten wealth of the Marcoses. In *Telecommunications and Broadcast Attorneys of the Philippines v. Comelec*, 289 SCRA 337, it was held that the petitioner, an association of lawyers of radio and television broadcast companies, was not a proper party, because the members of petitioner have not shown that they have suffered any injury as a result of Sec. 92, B.P. 881. They do not have any interest as registered voters, because the case does not involve the right of suffrage. Neither do they have an interest as taxpayers because the case does not include the exercise by Congress of its taxing or spending powers. (However, a co-petitioner, a broadcast company, was deemed to have *locus standi* because it would suffer losses from the implementation of Sec. 92, B.P. 881, since it would be required to give free airtime to the Comelec.) Likewise, in *Integrated Bar of the Philippines (IBP) v. Zamora*, G.R. No. 141284, August 15, 2000, the petition seeking to nullify the order of President Estrada for the deployment of the Philippine Marines to join the PNP in visibility patrols around the Metro Manila area, was dismissed on the ground that the IBP had no legal standing to question the presidential act.

iv) *Related principles:*

iva) A party's standing in court is a procedural technicality, which may be set aside by the Court in view of the importance of the issues involved. Thus, where the issues raised by the petitioners are of paramount public interest, the Court may, in the exercise of its discretion, brush aside the procedural barrier [*Kilosbayan v. Guingona*, 232 SCRA 110]. This was reiterated in *Tatad v. Secretary, Department of Energy*, G.R. No. 124360, November 5, 1997 (and in the companion case, *Lagman v. Torres*, G.R. No. 127867), where, because of the far-reaching importance of the validity of R.A. 8180 deregulating the downstream oil industry, the Supreme Court brushed aside technicalities and took cognizance of the petition. Similarly, in *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002, the Supreme Court agreed with the Solicitor General's submission that the petitioners, by their being lawyers, are not invested with sufficient personality to institute the action, aside from their having failed to demonstrate the requisite showing of direct personal injury. But because of the paramount importance and the constitutional significance of the issues raised in the petition, the Court in the exercise of its sound discretion, brushed aside the procedural barrier and took cognizance of the petitions. Likewise, in *Information Technology Foundation v. Comelec*, G.R. No. 159139, January 13, 2004, it was held that the subject matter of the case is "a matter of public concern and imbued with public interest"; in other words, it is of "paramount public interest" and of "transcendental importance". The nation's political and economic future virtually hangs in the balance, pending the outcome of the 2004 elections; accordingly, the award for the automation of the electoral process was a matter of public concern, imbued with the public interest. This fact alone would justify relaxing the rule on legal standing, following the liberal policy of this Court whenever a case involves "an issue of overarching significance to our society".

ivb) A taxpayer, or group of taxpayers, is a proper party to question the validity of a law appropriating public funds [*Tolentino v. Comelec*, 41 SCRA 702; *Sanidad v. Comelec*, 73 SCRA 333]. In *Chavezv. Public Estates Authority and Amari*, G.R. No. 133250, July 09, 2002, the Supreme Court said that the petitioner has legal standing to bring this taxpayer's suit because the petitioner seeks to compel PEA to comply with its constitutional duties. In this case, there were two constitutional issues involved: first, the right of the citizen to information on matters of public concern; and second, the application of a constitutional provision intended to insure equitable distribution of alienable lands of the public domain among Filipino citizens. In *Tatad v. Garcia*, 243 SCRA 436, it was held that the prevailing doctrine in taxpayer suits is to allow taxpayers to question contracts entered into by the national government or government-owned or -controlled corporations allegedly in contravention of

law (citing the *Kilosbayan* ruling). Accordingly, in *Information Technology Foundation v. Comelec*, G.R. No. 159139, January 13, 2004, reiterated the principle that taxpayers are allowed to sue when there is a claim of "illegal disbursement of public funds", or if public money is being "deflected to any improper purpose", or when petitioners seek to restrain respondent from "wasting public funds through the enforcement of an invalid or unconstitutional law". In this case, the individual petitioners, suing as taxpayers, assert a material interest in seeing to it that public funds are properly and lawfully used, claiming that the bidding was defective, the winning bidder not a qualified entity, and the award of the contract contrary to law and regulations. Likewise, in *Brillantes v. Comelec*, G.R. No. 163193, June 15, 2004, the Supreme Court ruled that the representatives of political parties and the citizens' arms authorized to conduct an unofficial quick count are proper parties to question the Comelec resolution directing the transmission to it electronically by computers of the results of the elections in the precincts, to be used for advanced unofficial tabulation.

In *Jumamil v. Cafe*, G.R. No. 144570, September 21, 2005, the petitioner, as taxpayer, was held to be a proper party to question the constitutionality of several municipal resolutions and ordinances appropriating certain amounts for the construction of stalls in a public market, as well as the lease contracts entered into pursuant thereto. Considering the importance to the public of the suit assailing the constitutionality of a tax law, the Court may brush aside technicalities of procedure and take cognizance of the case.

ivb1) In *Macasiano v. National Housing Authority*, 224 SCRA 236, it was held that the Court has discretion on whether a taxpayer suit may be given due course.

v) *Facial challenge*. 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 the validity of 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. 135385, 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].

va) In *David v. Macapagal-Arroyo, supra.*, the Court held that a facial review of PP 1017 using the **overbreadth doctrine** is uncalled for. *First*, the overbreadth doctrine is an analytical tool developed for testing on their face statutes in free speech cases, not for testing the validity of a law that reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct. Undoubtedly, lawless violence, insurrection and rebellion are considered “harmful” and “unconstitutionally protected conduct”. The incontrovertible fact remains that PP 1017 pertains to a spectrum of conduct, not free speech, which is manifestly subject to state regulation. *Second*, facial invalidation of laws is considered as manifestly strong medicine, to be used sparingly and only as a last resort, thus, is generally disfavored. A facial challenge on the ground of *overbreadth* is the most difficult challenge to mount successfully since the challenger must establish that there can be no instance when the assailed law may be valid. Here, petitioners did not even attempt to show whether this situation exists.

vb) **Void-for-Vagueness.** Related to “overbreadth”, this doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application. It is subject to the same principles governing the “overbreadth” doctrine. For one, it is also an analytical tool for testing “on their faces” statutes in free speech cases. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications [*David v. Macapagal-Arroyo, supra.*, cited in *Romualdez v. Commission on Elections, G.R. No. 167011, April 30, 2008*]. The test to determine whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. The Court has stressed that the vagueness doctrine merely requires a reasonable degree of certainty for the statute to be upheld, not absolute precision or mathematical exactitude. Thus, Sec. 45 (j) of R.A. No. 8189 which provides that violation of any of the provisions of the law is an election offense is specific enough, since as held in *Estrada v. Sandiganbayan*, “a statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them, much less do we have to define every word we use [*Romualdez v. Commission on Elections, supra.*].

vb1) As to the issue of **vagueness**, the petitioners did • not attempt to show that PP 1017 is vague in its application. They failed to establish that men of common intelligence cannot understand the meaning and application of PP 1017 [*David v. Macapagal-Arroyo, supra.*].

c) **The constitutional question must be raised at the earliest possible opportunity.** In *Matibag v. Benipayo, G.R. No. 149036, April 2, 2002*, it was

held that the earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if not raised in the pleadings, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal.

i) Thus, in *Estaria v. Ranada*, G.R. No. 159314, June 26, 2006, where the petitioner, who had been ordered dismissed from the service by the Ombudsman for dishonesty and grave misconduct, raised the issue of constitutionality of the provision in RA 6770 (Ombudsman Act) for the first time before the Court of Appeals, the Supreme Court said that petitioner raised the issue at the earliest opportunity. He could not raise it in his motion for reconsideration before the Ombudsman, because the Office of the Ombudsman is without jurisdiction to entertain questions of the constitutionality of a law.

ii) But in *Umalis v. Guingona*, G.R. No. 131124, March 21, 1999, the question of the constitutionality of the Presidential Commission on Anti-Graft and Corruption (PCAGC) was not entertained because the issue was raised by the petitioner only in his motion for reconsideration before the RTC of Makati. It was too late to raise the issue for the first time at that stage of the proceedings.

iii) However, in criminal cases, the question can be raised at any time at the discretion of the court; in civil cases, the question can be raised at any stage of the proceedings if necessary for the determination of the case itself; and in every case, except when there is estoppel, it can be raised at any stage if it involves the jurisdiction of the court [*People v. Vera, supra., Zandueta v. De la Costa*, 66 Phil. 115].

d) The decision on the constitutional question must be determinative of the case itself. Because of the doctrine of separation of powers which demands that proper respect be accorded the other departments, courts are loathe to decide constitutional questions as long as there is some other basis that can be used for a decision. The constitutional issue must be the *lis mota* of the case. See: *Zandueta v. de la Costs, supra.; De la Llana v. Alba*, 112 SCRA 294.

i) In *Planters Products v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, where Fertiphil Corporation sought the refund of the capital recovery component it had paid to the Fertilizer and Pesticide Authority levied under LOI No. 1465 by challenging the validity of the LOI, the Supreme Court held that the issue of constitutionality of the LOI was adequately pleaded in the complaint; it is the *lis mota* of the case because the trial court cannot determine the claim without resolving the issue of constitutionality.

ii) However, In *Tarrosa v. Singson*, 232 SCRA 553, the Court refrained from passing upon the constitutionality of the assailed provision in R.A. 7653 (which provided that the appointment of the Governor of the Bangko Sentral ng Pilipinas should be confirmed by the Commission on Appointments) because of the principle that bars judicial inquiry into a constitutional question unless the resolution thereof is indispensable to the determination of the case. In *Ty v. Trampe*, 250 SCRA 500, the Court stressed that it will not pass upon a question of constitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. Likewise, in *Mirasol v. Court of Appeals*, *supra*, since the issue was primarily for accounting and specific performance which could be resolved without having to rule on the constitutionality of P.D. 579, the Court refused to exercise the power of judicial review.

iii) In *Arceta v. Judge Mangrobang*, G.R. No. 152895, June 15, 2004, in a new challenge to the constitutionality of B.P. 22, the Supreme Court did not find the constitutional question to be the very *lis mota* presented in the controversy. Every law has in its favour the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.

5. Effects of Declaration of Unconstitutionality. Two views:

- a) 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. See *Art. 7, Civil Code of the Philippines*.

b) Modern view: Courts simply refuse to recognize the law and determine the rights of the parties as if the statute had no existence. See: *Manila Motors v. Flores*, 99 Phil. 738; *Serrano de Agbayani v. PNB*, 35 SCRA 429; *Republic v. Henda*, 119 SCRA 411. Certain legal effects of the statute prior to its declaration of unconstitutionality may be recognized. See: *Pelaez v. Auditor General*, 15 SCRA 569. Thus, a public officer who implemented an unconstitutional law prior to the declaration of unconstitutionality cannot be held liable [*Ynot v. IAC, supra*],

6. Partial Unconstitutionality. Requisites:

a) The Legislature must be willing to retain the valid portion(s), usually shown by the presence of a separability clause in the law; and

b) The valid portion can stand independently as law. See: *In Re: Cunanan*, 94 Phil. 534; *Salazar v. Achacoso*, 183 SCRA 145.

III. THE PHILIPPINES AS A STATE

A. *Definition of a State.* A community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing a government to which a great body of inhabitants render habitual obedience. See: *Collector of Internal Revenue v. Campos Rueda*, 42 SCRA 23.

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1. *Distinguished from Nation.* State is a legal or juristic concept, while nation is an ethnic or racial concept.

2. *Distinguished from Government.* Government is merely an **instrumentality of the State** through which the will of the State is implemented and realized.

B. *Elements of a State.*

1. *People.*

a) Different meanings as used in the Constitution: (i) Inhabitants [Sec. 2, Art. III; Sec. 1, Art. XIII]; (ii) Citizens [Preamble; Secs. 1 & 4, Art. II; Sec. 7, Art. III]; (iii) Electors [Sec. 4, Art. VII].

b) As requisite for Statehood: Adequate number for self-sufficiency and defense; of both sexes for perpetuity.

2. *Territory* [Art. I; R.A. 3046; R.A. 5446].

a) The National Territory: “The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas” [Sec. 1, Art. I].

b) Components: Terrestrial, Fluvial, Maritime and Aerial domains.

c) The Philippine Archipelago: (i) Treaty of Paris, December 10, 1898 (Cession of the Philippine Islands by Spain to the United States); (ii) Treaty between Spain and US at Washington, November 7, 1900 (Cagayan, Sulu & Sibuto); (iii) Treaty between US and Great Britain, January 2, 1930 (Turtle & Mangsee Islands).

d) Other territories over which the Philippines exercises jurisdiction. (i) Batanes [1935 Constitution]; (ii) Those contemplated in Art. I, 1973 Constitution [belonging to the Philippines by historic right or legal title]; (iii) PD 1596, June 11, 1978.

e) Archipelago Doctrine: “*The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines*” [2nd sentence, Sec. 1, Art II]

i) This articulates the *archipelagic doctrine of national territory*, based on the principle that an archipelago, which consists of a number of islands separated by bodies of water, should be treated as one integral unit.

ii) *Straight baseline method:* Imaginary straight lines are drawn joining the outermost points of outermost islands of the archipelago, enclosing an area the ratio of which should not be more than 9:1 (water to land); provided that the drawing of baselines shall not depart, to any appreciable extent, from the general configuration of the archipelago. The waters within the baselines shall be considered internal waters; while the breadth of the territorial sea shall then be measured from the baselines.

iii) *UN Convention on the Law of the Sea* [April 30, 1982; ratified by the Philippines in August, 1983] provides (i) Contiguous Zone of 12 miles; (ii) Exclusive Economic Zone of 200 miles. Although the contiguous zone and most of the exclusive economic zone may not, technically, be part of the territory of the State, nonetheless, the coastal State enjoys preferential rights over the marine resources found within these zones. See also P.D. 1599, June 11, 1978.

3. Government

a) Defined. The agency or instrumentality through which the will of the State is formulated, expressed and realized. See U.S. v. Dorr, 2 Phil 332.¹⁾

i) Government of the Philippines is “the corporate governmental

entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government” [Sec. 2 (1), *Administrative Code of 1987*].

b) Functions:

i) Traditionally, the functions of government have been classified into *constituent*, which are mandatory for the Government to perform because they constitute the very bonds of society, such as the maintenance of peace and order, regulation of property and property rights, the administration of justice, etc; and *ministrant*, those intended to promote the welfare, progress and prosperity of the people, and which are merely optional for Government to perform.

ii) In *Romualdez-Yap v. Civil Service Commission*, 225 SCRA 285, the Court declared that a distinction can be made on the validity of the reorganization between a government bureau or office performing constituent functions (like the Bureau of Customs) and a government-owned or -controlled corporation performing ministrant functions (like the PNB). Commercial or universal banking is, ideally, not a governmental, but a private sector, endeavor. It is an optional function of government. [However, reorganization in either must meet a common test, the test of good faith.] In *Fontanilla v. Maliaman*, 194 SCRA 486, the Supreme Court said that the functions of government are classified into governmental or constituent and proprietary or ministrant. The former involves the exercise of sovereignty and therefore compulsory; the latter connotes merely the exercise of proprietary functions and thus considered as optional.

iii) In *Shipside, Inc. v. Court of Appeals*, G.R. No. 143377, February 20, 2001, it was held that the Bases Conversion Development Authority (BCDA), created under R.A. 7227, performs functions which are basically proprietary in nature. The promotion of economic and social development of Central Luzon, in particular, and the country's goal for enhancement, in general, do not make BCDA equivalent to Government. Other corporations, such as SSS, GSIS, NIA, although performing functions aimed at promoting public interest and public welfare, are not invested with government attributes. [Thus, with the transfer to BCDA of Camp Wallace, the government no longer had a right or interest to protect; the real party in interest to recover the property is, thus, the BCDA, not the Republic of the Philippines.]

iv) In *PVTA v. CIR*, 65 SCRA 416, the Court noted that the distinction between the two functions had become blurred. See also *Edu v. Ericta*, 35 SCRA 481, where the Supreme Court declared that, as early as the 1935 Constitution, we had already repudiated the *laissez faire* doctrine. The repudiation of the *laissez faire* doctrine is reiterated in *Association of Philippine Coconut Desiccators v. Philippine Coconut Authority*, G.R. No. 110526, February 10, 1998, where it was held that although the 1987 Constitution enshrines free

enterprise as a policy, it nevertheless reserves to the Government the power to intervene whenever necessary to promote the general welfare, as reflected in Secs. 6 and 19, Art. XII.

c) *Doctrines of Parens Patriae*. Literally, parent of the people. As such, the Government may act as guardian of the rights of people who may be disadvantaged or suffering from some disability or misfortune. See *Government of the Philippine Islands v. Monte de Piedad*, 35 SCRA 738; *Cabanas v. Pilapil*, 58 SCRA 94.

d) Classification:

i) *De jure* vs. *De facto*. See: *Co Kim Chan v. Tan Keh*, 75 Phil. 113; *Lawyers League for a Better Philippines v. Aquino*, *supra*.

ia) Kinds of *de facto* government: That which takes possession or control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter; that which is established by the inhabitants of a territory who rise in insurrection against the parent state; and that which is established by the invading forces of an enemy who occupy a territory in the course of war. The last is denominated a *de facto government of paramount force*.

ii) *Presidential* vs. *parliamentary* government. The principal distinction is that in a presidential government, there is separation of executive and legislative powers (the first is lodged in the President, while the second is vested in Congress); while in a parliamentary government, there is fusion of both executive and legislative powers in Parliament, although the actual exercise of the executive powers is vested in a Prime Minister who is chosen by, and accountable to, Parliament.

iii) *Unitary* vs. *federal* government. A unitary government is a single, centralized government, exercising powers over both the internal and external affairs of the State; while a federal government consists of autonomous state (local) government units merged into a single State, with the national government exercising a limited degree of power over the domestic affairs but generally full direction of the external affairs of the State.

4. Sovereignty

a) Defined: The supreme and uncontrollable power inherent in a State by which that State is governed.

b) Kinds:

i) *Legal*, which is the power to issue final commands; or *Political*, which is the sum total of all the influences which lie behind the law.

ii) *Internal*, or the supreme power over everything within its territory; or *External*, also known as *independence*, which is freedom from external control.

c) Characteristics: permanence, exclusiveness, comprehensiveness, absoluteness, indivisibility, inalienability, imprescriptibility. See *Laurel v. Misa*, 77 Phil. 856.

d) Effects of change in sovereignty: Political laws are abrogated [*People v. Perfecto*, 43 Phil. 887; *Macariola v. Asuncion*, 114 SCRA 77]; municipal laws remain in force [*Vilas v. City of Manila*, 229 US 345].

e) Effects of belligerent occupation: No change in sovereignty. See: *Peralta v. Director of Prisons*, 75 Phil. 285; *Alcantara v. Director of Prisons*, 75 Phil. 749; *Ruffyv. Chief of Staff*, 75 Phil. 875.

i) However, political laws, except the law on treason, are suspended [*Laurel v. Misa*, 77 Phil. 856]; municipal laws remain in force unless repealed by the belligerent occupant. At the end of the belligerent occupation, when the occupant is ousted from the territory, the political laws which had been suspended during the occupation shall automatically become effective again, under the doctrine of *jus postliminium*.

f) Dominium v. Imperium: *Dominium* refers to the capacity to own or acquire property, including lands held by the State in its proprietary capacity; while *Imperium* is the authority possessed by the State embraced in the concept of sovereignty.

g) Jurisdiction

i) Territorial: power of the State over persons and things within its territory. Exempt are: (a) Foreign states, heads of state, diplomatic representatives, and consuls to a certain degree; (b) Foreign state property, including embassies, consulates, and public vessels engaged in noncommercial activities; (c) Acts of state; (d) Foreign merchant vessels exercising the rights of innocent passage or involuntary entry, such as arrival under stress; (e) Foreign armies passing through or stationed in its territory with its permission; and (f) Such other persons or property, including organizations like

the United Nations, over which it may, by agreement, waive jurisdiction. See: *Convention on Privileges and Immunities of the United Nations; Convention on Privileges and Immunities of Specialized Agencies of the United Nations; World Health Organization v. Aquino, 48 SCRA 242; Southeast Asian Fisheries Development Center v. NLRC, 206 SCRA 283.*

ii) Personal: power of the State over its nationals, which may be exercised by the State even if the individual is outside the territory of the State.

iii) Extraterritorial: power exercised by the State beyond its territory in the following cases: (a) 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 nonresident aliens; (b) By virtue of its relations with other states or territories, as when it establishes a colonial protectorate, or a condominium, or administers a trust territory, or occupies enemy territory in the course of war; (c) 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 state; (d) By the principle of exterritoriality, as illustrated by the immunities of the head of state in a foreign country; (e) Through enjoyment of easements or servitudes, such as the easement of innocent passage or arrival under stress; (f) 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; (g) The exercise of limited jurisdiction over the contiguous zone and the patrimonial sea, to prevent infringement of its customs, fiscal, immigration or sanitary regulations.

C. *State Immunity from Suit*. “The State cannot be sued without its consent” [Sec. 3, Art. XVI].

1. Basis: There can be no legal right against the authority which makes the law on which the right depends [Republic v. Villasor, 54 SCRA 83]. However, it may be sued if it gives consent, whether express or implied. The doctrine is also known as the Royal Prerogative of Dishonesty.

2. Immunity is enjoyed by other States, consonant with the public international law principle of par in parem non habet imperium. The Head of State, who is deemed the personification of the State, is inviolable, and thus, enjoys immunity from suit.

a) The State's diplomatic agents, including consuls to a certain extent, are also exempt from the jurisdiction of local courts and administrative tribunals. [See PUBLIC INTERNATIONAL LAW, *infra*.]

i) A foreign agent, operating within a territory, can be cloaked with immunity from suit but only **as long as it can be established that he is acting within the directives of the sending State.** The cloak of protection is removed **the moment the foreign agent is sued in his individual capacity**, as when he is sought to be made liable for whatever damage he may have caused by his act done with malice or in bad faith or beyond the scope of his authority or jurisdiction. In *Minucherv. Court of Appeals, G.R. No. 142396, February 11, 2003*, it was sufficiently established that respondent Arthur Scalzo an agent of the US Drug Enforcement Agency, was tasked to conduct surveillance on suspected drug activities within the country, and having ascertained the target, to inform the local law enforcers who would then be expected to make the arrest. In conducting this surveillance and later, acting as the poseur- buyer during the buy-bust operation, and then becoming a principal witness in the criminal case against Minucher, Scalzo can hardly be said to have acted beyond the scope of his official functions or duties. He should, therefore, be accorded diplomatic immunity.

b) The **United Nations**, as well as its organs and specialized agencies, are likewise beyond the jurisdiction of local courts [*Convention on Privileges and Immunities of the United Nations; Convention on Privileges and Immunities of Specialized Agencies of the United Nations; World Health Organization v. Aquino, supra.*].

i) In *Lasco v. UNRFNRE (United Nations Revolving Fund for Natural Resources Exploration)*, 241 SCRA 681, the Supreme Court upheld the diplomatic immunity of private respondent as established by the letter of the Department of Foreign Affairs recognizing and confirming such immunity in accordance with the 1946 Convention on the Privileges and Immunities of the UN of which the Philippines is a signatory.

c) Even **other international organizations or international agencies** may be immune from the jurisdiction of local courts and local administrative tribunals. i)

In *SEAFDEC (Southeast Asia Fisheries Development*

i)

Center) v. NLRC, 241 SCRA 580, and SEAFDEC v. Acosta, G.R. Nos. 97468-70. September 02, 1993, it was held that SEAFDEC, as an international agency, enjoys diplomatic immunity. It was established through an international agreement to which the Philippines became a signatory on January 16, 1968. The purpose of the Center is to contribute to the promotion of fisheries development in Southeast Asia by mutual cooperation among the member governments of the Center. The invocation by private respondents of the doctrine of estoppel is unavailing, because estoppel does not confer jurisdiction

on a tribunal that has none over a cause of action. The *Tijam v. Sibonghanoy*, 23 SCRA 29, ruling cannot apply to parties which enjoy foreign and diplomatic immunity [*SEAFDEC-Aquaculture v. NLRC*, 206 SCRA 283].

ii) In *Callado v. IRRI*, 244 SCRA 210, the Court upheld anew the constitutionality of Sec. 3, P.D. 1620, which provides that the International Rice Research Institute (IRRI) shall enjoy immunity from any penal, civil and administrative proceedings, except insofar as that immunity has been expressly waived by the Director General of the Institute or his authorized representative. Citing *International Catholic Migration Commission v. Calleja* (and *Kapisanan ng Manggagawa at TAC sa IRRI v. Secretary of Labor*), 190 SCRA 120, the Court stated that the letter of the Acting Secretary of Foreign Affairs to the Secretary of Labor and Employment constituted a categorical recognition by the Executive Branch of the Government that IRRI enjoys immunities accorded to international organizations, a determination held to be a political question conclusive upon the Courts in order not to embarrass a political department of the government.

3. *Test to determine if suit is against the State:* On the assumption that decision is rendered against the public officer or agency impleaded, **will the enforcement thereof require an affirmative act from the State, such as the appropriation of the needed amount to satisfy the judgment?** If so, then it is a suit against the State. See: *Sanders v. Veridiano*, 162 SCRA 88; *Republic v. Feliciano*, 148 SCRA 424.

a) In *Tan v. Director of Forestry*, 125 SCRA 302, the Supreme Court said that State immunity from suit may be invoked as long as the suit really **affects the property, rights or interests of the State and not merely those of the officers nominally made party defendants**. In this case, the Court said that the promotion of public welfare and the protection of the inhabitants near the public forest are property rights and interests of the State. In *Veterans Manpower and Protective Services, Inc. v. Court of Appeals*, 214 SCRA 286, the suit for damages filed against the PC Chief and the PC-SUSIA would require an affirmative act of appropriation should damages be awarded, and is, therefore, a suit against the State.

4. *Suits against Government Agencies*

a) Incorporated: If the charter provides that the agency can sue and be sued, then suit will lie, including one for tort. The provision in the charter constitutes express consent on the part of the State to be sued. See: *PNB v. CIR*, 81 SCRA 314; *Rayo v. CFU of Bulacan*, 110 SCRA 460; *SSS v. Court of Appeals*, 120 SCRA 707.

i) Municipal corporations are agencies of the State when they are engaged in governmental functions and, therefore, should enjoy the sovereign immunity from suit. However, they are subject to suit even in the performance of such functions because their respective charters provide that they can sue and be sued [*Municipality of San Fernando, La Union v. Judge Firme*, 195 SCRA 692]. One of the corporate powers of local government units, as enumerated in Sec. 22, *Local Government Code*, is the power to sue and be sued.

ii) In *National Irrigation Administration v. Court of Appeals*, 214 SCRA 35, the Supreme Court reiterated that NIA is a corporate body performing proprietary functions, whose charter, P.D. 552, provides that it may sue and be sued.

iii) In *Philippine National Railways v. Intermediate Appellate Court*, 217 SCRA 401, it was held that although the charter of PNR is silent on whether it may sue or be sued, it had already been ruled in *Malong v. PNR*, 185 SCRA 63, that the PNR "is not performing any governmental function" and may, therefore, be sued.

b) Unincorporated: Inquire into principal functions of the agency:

i) If governmental: NO suit without consent [*Sanders v. Veridiano, supra.*; *Bureau of Printing v. Bureau of Printing Employees Association*, 1 SCRA 340]. In the *Veterans Manpower* case, the Court said that the PC Chief and PC-SUSIA are instrumentalities of the national government exercising primarily governmental functions (regulating the organization and operation of private detective, watchmen or security guard agencies), and thus may not be sued without consent. In *Farolan v. Court of Tax Appeals*, 217 SCRA 298, the Supreme Court said that the Bureau of Customs, being an unincorporated agency without a separate juridical personality, enjoys immunity from suit. It is invested with an inherent power of sovereignty, namely the power of taxation; it performs governmental functions. In *Mobil Philippines Exploration v. Customs Arrastre Service*, 18 SCRA 1120, it was held that the Customs Arrastre Service is merely an adjunct of the Bureau of Customs. A suit against it is, therefore, a suit against the Bureau of Customs, an unincorporated agency performing primarily governmental functions. [NOTE: Even in the exercise of proprietary functions incidental to its primarily governmental functions, an unincorporated agency still cannot be sued without its consent.]

ia) But in *Department of Agriculture v. NLRC*, 227 SCRA 693, because of the express consent contained in Act No. 3038 (where the Philippine Government "consents and submits to be sued upon any money

claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties"), the Department of Agriculture could be sued on the contract for security services entered into by it (subject to prior filing of the claim with the Commission on Audit), despite it being an unincorporated agency performing primarily governmental functions.

ii) If proprietary: suit will lie^A because when the State engages in principally proprietary functions, then it descends to the level of a private individual, and may, therefore, be vulnerable to suit. See: *National Airports Corporation v. Teodoro*, 91 Phil. 207; *Civil Aeronautics Administration v. Court of Appeals*, 167 SCRA 28.

5. *Suit against Public Officers.* The doctrine of State immunity also applies to complaints filed against officials of the State for acts performed by them in the discharge of their duties within the scope of their authority. Thus, in the *Veterans Manpower* case, the suit against the PC Chief and PC-SUSIA was dismissed for being a suit against the state, since it was a suit against public officers in the discharge of official functions which are governmental in character. Likewise, in *Larkins v. NLRC*, 241 SCRA 598, it was noted that the private respondents were dismissed from their employment by Lt. Col. Frankhauser acting for and in behalf of the US government which, by right of sovereign power, operated and maintained the dormitories at the Clark Air Base for USAF members.

a) In *Sanders v. Veridiano*, 162 SCRA 88, the Supreme Court spoke of a number of well-recognized exceptions when a public officer may be sued without the prior consent of the State, viz: (1) to compel him to do an act required by law; (2) to restrain him from enforcing an act claimed to be unconstitutional; (3) to compel the payment of damages from an already appropriated assurance fund or to refund tax over-payments from a fund already available for the purpose; (4) to secure a judgment that the officer impleaded may satisfy by himself without the State having to do a positive act to assist him; and (5) where the government itself has violated its own laws, because the doctrine of state immunity "cannot be used to perpetrate an injustice".

b) The unauthorized acts of government officials are not acts of state; thus, the public officer may be sued and held personally liable in damages for such acts [*Shauf v. Court of Appeals*, 191 SCRA 713], Where a public officer has committed an *ultra vires* act, or where there is a showing of bad faith, malice or gross negligence, the officer can be held personally accountable, even if such acts are claimed to have been performed in connection with

official duties [*Wylie v. Rarang*, 209 SCRA 357]. Thus, the PCGG or any of its members, may be held civilly liable (for the sale of an aircraft to Fuller Aircraft, which was void) if they did not act with good faith and within the scope of their authority in the performance of official duties [*Republic v. Sandiganbayan*, G.R. No. 142476, March 20, 2001]. Likewise, in *U.S. v. Reyes*, 219 SCRA 192, petitioner Bradford, Activity Exchange Manager at JUSMAG Headquarters, was held personally liable, inasmuch as the search of respondent Montoya at the JUSMAG parking lot (which subjected respondent to embarrassment) was held to be beyond the scope and even beyond the Manager's official functions. Similarly, in *Republic v. Hon. Edilberto Sandoval*, 220 SCRA 124, even as the Supreme Court dismissed the suit against the Republic of the Philippines, the action for damages against the military personnel and the policemen responsible for the 1989 Mendiola massacre was upheld, inasmuch as the initial findings of the Davide Commission (tasked by President Aquino to investigate the incident) showed that there was, at least, negligence on their part when they fired their guns.

c) **Where the public official is sued in his personal capacity**, the doctrine of state immunity will not apply, even if the acts complained of were committed while the public official was occupying a public position. In *Lansang v. Court of Appeals*, G.R. No. 102667, February 23, 2000, the petitioner was sued for allegedly "personal motives" in ordering the ejection of the General Assembly of the Blind, Inc. (GABI) from the Rizal Park; thus, the case was not deemed a suit against the State.

6. *Need for consent*. In order that suit may lie against the state, there must be consent, either **express or implied**. Where no consent is shown, state immunity from suit may be invoked as a defense by the courts *sua sponte* at any stage of the proceedings, because waiver of immunity, being in derogation of sovereignty, will not be inferred lightly and must be construed in *strictissimi juris*. Accordingly, the complaint (or counterclaim) against the State must allege the existence of such consent (and where the same is found), otherwise, the complaint may be dismissed [*Republic v. Feliciano*, 148 SCRA 424].

a) Express consent. Express consent can be given only by **an act of the legislative body** [*Republic v. Feliciano, supra.*], in a general or a special law.ⁱ⁾

i) *General Law*. An example of a general law granting consent is **CA327**, as amended by PD 1445, which requires that all money claims against the government must first be filed with the Commission on Audit before suit is instituted in court. See: *Sayson v. Singzon*, 54 SCRA 282. The Department

of Agriculture may be sued for money claims based on a contract entered into in its governmental capacity, because of the express consent contained in Act No. 3038, provided that the claim be first brought to the Commission on Audit in accordance with CA 327, as amended [*Department of Agriculture v. NLRC*, 227 SCRA 693].

ia) But in *Amigable v. Cuenca*, 43 SCRA 360, an action for the recovery of the value of the property taken by the government and converted into a public street without payment of just compensation was allowed, despite the failure of the property owner to file his claim with the Auditor General. Invoking *Ministerio v. City of Cebu*, 40 SCRA 464, the Supreme Court said that suit may lie because the doctrine of State immunity cannot be used to perpetrate an injustice. This ruling was reiterated in *De los Santos v. Intermediate Appellate Court*, 223 SCRA 11, where it was held that the “public respondents’ belief that the property is public, even if buttressed by statements of other public officials, is no reason for the unjust taking of petitioner’s property”; after all, the TCT was in the name of the petitioner. See also *Republic v. Sandiganbayan*, 204 SCRA 212.

ib) In *EPG Construction v. Secretary Vigilar*, G.R. No. 131544, March 16, 2001, the ruling in *Ministerio* was invoked when the respondent DPWH Secretary denied the money claims of petitioners even after the DPWH Auditor interposed no objection to the payment and the DBM had ordered the release of the amount under a corresponding Advise of Allotment it issued. Where in *Ministerio*, the Court said that the doctrine cannot serve as an instrument for perpetrating an injustice on a citizen, in this case the Supreme Court declared that it is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained.

ic) In *Santiago v. Republic*, 87 SCRA 294, an action for the revocation of a donation because of the failure of the defendant to comply with stipulated conditions was allowed, inasmuch as the action did not involve a money claim.

ri) Special Law. See: *Merritt v. Government of the Philippines Islands*, 34 Phil. 311. This form of consent must be embodied in a statute and cannot be given by a mere counsel [*Republic v. Purisima*, 78 SCRA 470].

iia) By virtue of P.D. 1620, the grant of immunity to IRRI is clear and unequivocal, and an express waiver by its Director General is the only way by which it may relinquish or abandon this immunity [*Callado v. IRRI*, *supra*.].

b) Implied Consent

i) *When the State commences litigation*, it becomes vulnerable to a counterclaim [See: *Froilan v. Pan Oriental Shipping*, G.R. No. L-6060, Sept. 30, 1950]. Intervention by the State would constitute commencement of litigation, except when the State intervenes not for the purpose of asking for any affirmative relief, but only for the purpose of resisting the claim precisely because of immunity from suit [*Lim v. Brownell*, 107 Phil. 345],

ii) *When the State enters into a business contract*. See: *U.S. v. Ruiz*, 136 SCRA 487, where the Supreme Court distinguished between contracts entered into by the State in *jure imperii* (sovereign acts) and in *jure gestionis* (commercial or proprietary acts). Where the contract is in pursuit of a sovereign activity, there is no waiver of immunity, and no implied consent may be derived therefrom.

iia) In *U. S. v. Ruiz*, it was held that the contract for the repair of wharves was a contract in *jus imperii*, because the wharves were to be used in national defense, a governmental function. In *JUSMAG Phil. v. NLRC*, 239 SCRA 224, the engagement of the services of private respondent was held to be performance of a governmental function by JUSMAG, on behalf of the United States. Accordingly, JUSMAG may not be sued under such a contract. In *Republic of Indonesia v. Vinzon*, G.R. No. 154705, June 26, 2003, it was held that contracts entered into by a sovereign state in connection with the establishment of a diplomatic mission, including contracts for the upkeep or maintenance of air conditioning units, generator sets, electrical facilities, water heaters and water motor pumps of the embassy and the Ambassador's residence, are contracts in *jure imperii*. The fact that the contract contains a provision that any legal action arising out of the agreement shall be settled according to the laws of the Philippines and by a specified court of the Philippines does not necessarily mean a waiver of the state's sovereign immunity from suit.

iib) Conversely, in *U.S. v. Guinto*, 182 SCRA 644, the contract bidden out for barbershop facilities in the Clark Field US Air Force Base was deemed commercial. Similarly, in a companion case, *U.S. v. Rodrigo*, a contract for restaurant services within the Camp John Hay Air Station was likewise held commercial in character.

iic) Note, however, that in *Republic v. Sandiganbayan*, 204 SCRA 212, the Court held that even if, in exercising the power of eminent domain, the State exercises a power *jus imperii*, as distinguished from its proprietary right of *jus gestionis*, where property has been taken without just compensation being paid, the defense of immunity from suit cannot be set up in an action for payment by the owner. See *Amigable v. Cuenca*, 43 SCRA 360.

iid) In *Republic (PCGG) v. Sandiganbayan*, G.R. No. 129406, March 6, 2006, 227 shares in Negros Occidental Golf and Country Club, Inc. (NOGCC) owned and registered in the name of private respondent Benedicto were sequestered and taken over by PCGG fiscal agents. In a suit for payment of dues of the sequestered shares, PCGG raised, among others, the defense of immunity from suit. The Supreme Court held that by entering into a Compromise Agreement with Benedicto, the Republic stripped itself of its immunity and placed itself in the same level as its adversary. When the State enters into a contract through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights and obligations arise therefrom, the State may be sued even without its express consent, precisely because by entering into a contract, the sovereign descends to the level of the citizen.

7. *Scope of Consent.* Consent to be sued does not include consent to the execution of judgment against it.

a) Such execution will require another waiver, because the power of the court ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment, unless such disbursement is covered by the corresponding appropriation as required by law [*Republic v. Villasor*, 54 SCRA 84; *Department of Agriculture v. NLRC*, 227 SCRA 693]. Thus, in *Larkins v. NLRC*, 241 SCRA 598, considering that the employer of private respondents was not Lt. Col. Frankhauser or the petitioner but the U.S. Government which, by right of sovereign power, operated and maintained the dormitories at the Clark Air Base for USAF members, the awards (of monetary claims to the private respondents) will have to be satisfied by the U.S. Government. Without its consent the properties of the U.S. Government may not be subject to execution.

b) But funds belonging to government corporations (whose charters provide that they can sue and be sued) that are deposited with a bank are not exempt from garnishment [*Philippine National Bank v. Pabalan*, 83 SCRA 595; *Rizal Commercial Bank v. De Castro*, 168 SCRA 49]. In *National Housing Authority v. Heirs of Quivelondo*, G.R. No. 154411, June 19, 2003, it was held that if the funds belong to a public corporation or a government- owned or controlled corporation which is clothed with a personality of its own, then the funds are not exempt from garnishment. This is so because when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. NHA is one such corporation; thus, its funds are not exempt from garnishment or execution.

i) However, in *Municipality of San Miguel, Bulacan v. Fernandez*, 130 SCRA 56, it was held that funds of a municipality (although it is an incorporated agency whose charter provides that it can sue and be sued) are public in character and may not be garnished unless there is a corresponding appropriation ordinance duly passed by the Sangguniang Bayan. Thus, in *City of Caloocan v. Allarde*, G.R. No. 107271, September 10, 2003, the rule was reiterated that all government funds deposited with any official depositary bank of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds and may not be subject to garnishment or levy in the absence of a corresponding appropriation as required by law. In this case, the City of Caloocan had already approved and passed Ordinance No. 0134, Series of 1992, allocating the amount of P439.377.14 for respondent Santiago's back salaries plus interest. Thus, this case fell squarely within the exception, and the amount may therefore be garnished.

ia) Be that as it may, in *Municipality of Makati v. Court of Appeals*, 190 SCRA 206, it was held that where the municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of *mandamus* in order to compel the enactment and approval of the necessary appropriation ordinance and the corresponding disbursement of municipal funds to satisfy the money judgment.

c) In *Pacific Products v. Ong*, 181 SCRA 536, the Supreme Court said that by the process of garnishment, the plaintiff virtually sues the garnishee for a debt due from the defendant. The debtor-stranger becomes a forced intervenor; when served with the writ of attachment, he becomes a party to the action. Money in the hands of government agency (engaged in governmental functions), even if due to a third party, is not liable to creditors of the third party through garnishment. To allow this would be to allow a suit against the State without the latter's consent.

8. *Suability not equated with outright liability.* Liability will have to be determined by the Court on the basis of the evidence and the applicable law.

a) In *Merritt v. Government of the Philippine Islands*, *supra*., while consent to be sued was granted through a special law, the government was held not liable for damages, because under the attendant circumstances the government was not acting through a special agent.

. b) In *Fontanilla v. Maliaman*, 194 SCRA 486, the Supreme Court said that the National Irrigation Administration is a government agency with a

juridical personality separate and distinct from the government; it is a corporate body performing proprietary functions. Thus, the NIA may be held liable for damages caused by the negligent act of its driver who was not a special agent. This was reiterated in *National Irrigation Administration v. Court of Appeals*, 214 SCRA 35.

IV. FUNDAMENTAL POWERS OF THE STATE

A. General Principles

1. *The inherent powers of the State are:* (a) Police Power; (b) Power of Eminent Domain; and (c) Power of Taxation

2. *Similarities:*

- a) Inherent in the State, exercised even without need of express constitutional grant.
- b) Necessary and indispensable; State cannot be effective without them.
- c) Methods by which State interferes with private property.
- d) Presuppose equivalent compensation
- e) Exercised primarily by the Legislature.

3. *Distinctions:*

- a) Police power regulates both liberty and property; eminent domain and taxation affect only property rights.
- b) Police power and taxation are exercised only by government; eminent domain may be exercised by private entities.
- c) Property taken in police power is usually noxious or intended for a noxious purpose and may thus be destroyed; while in eminent domain and taxation, the property is wholesome and devoted to public use or purpose.
- d) Compensation in police power is the intangible, altruistic feeling that the individual has contributed to the public good; in eminent domain, it is the full and fair equivalent of the property taken; while in taxation, it is the protection given and/or public improvements instituted by government for the taxes paid.⁵

5. *Limitations:* Generally, the Bill of Rights, although in some cases the exercise of the power prevails over specific constitutional guarantees. The courts may annul the improvident exercise of police power, e.g., in *Quezon City v. Erricta*, 122 SCRA 759 and in *Philippine Press Institute v. Comelec*, 244 SCRA 272.

B. Police Power

1. *Definition.* The power of promoting public welfare by restraining and regulating the use of liberty and property.

2. *Scope/Characteristics:* Police power is the most pervasive, the least limitable, and the most demanding of the three powers. The justification is found in the Latin maxims: *salus populi est suprema lex*, and *sic utere tuo ut alienum non laedas*.

a) Police power cannot be bargained away through the medium of a treaty or a contract [*Stone v. Mississippi*, 101 U.S. 814; *Ichong v. Hernandez*, 101 Phil. 1155].

b) The taxing power may be used as an implement of police power [*Lutz v. Araneta*, 98 Phil. 148; *Tiu v. Videogram Regulatory Board*, 151 SCRA 208; *Gaston v. Republic Planters Bank*, 158 SCRA 626; *Osmena v. Orbos*, 220 SCRA 703].

c) Eminent domain may be used as an implement to attain the police objective [*Association of Small Landowners v. Secretary of Agrarian Reform*, 175 SCRA 343].

d) A law enacted in the exercise of police power to regulate or govern certain activities or transactions could be given retroactive effect and may reasonably impair vested rights or contracts. Police power legislation is applicable not only to future contracts, but equally to those already in existence. Non-impairment of contracts or vested rights clauses will have to yield to the superior and legitimate exercise by the State of the police power [*Ortigas & Co. v. Court of Appeals*, G.R. No. 126102, December 4, 2000]. Thus, despite the retroactive effect of PD 957 (Subdivision and Condominium Buyers Protective Decree), there is no violation of the non-impairment clause, because the decree is a valid exercise of the police power, and police power prevails over contracts [*PNB v. Office of the President*, 255 SCRA 5],

e) 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. But like all rights and freedoms guaranteed by the Charter, their exercise may be so regulated pursuant to the police power of the State to safeguard health, morals, peace, education, order, safety, and the general welfare of the people. This regulation assumes particular pertinence in the field of medicine, to protect the public from the potentially deadly effects of incompetence and ignorance [*Professional Regulation Commission v. De Guzman*, G.R. No. 144681, June 21, 2004].

f) The right to bear arms is merely a statutory privilege. The license to carry a firearm is neither a property or a property right. Neither does it create a vested right. A permit to carry a firearm outside one's residence may be revoked at any time. Even if it were a property right, it cannot be considered as absolute as to be beyond the reach of the police power [*Chavez v. Romulo*, 431 SCRA 534].

g) Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment and due process clauses, since the State, under its all-encompassing police power, may alter, modify or amend the same in accordance with the demands of the general welfare [*Southeast Mindanao Goldmining Corporation v. Balite Portal Mining*, G.R. No. 135190, April 3, 2002].

h) A license to operate a motor vehicle is not a property right, but a privilege granted by the State, which may be suspended or revoked by the State in the exercise of its police power, in the interest of public safety and welfare, subject to the procedural due process requirements [*Metropolitan Manila Development Authority v. Garin*, G.R. No. 130230, April 15, 2005].

i) R.A. 9257, otherwise known as the "Expanded Senior Citizens Act of 2003", is a legitimate exercise of police power. Administrative Order No. 177 issued by the Department of Health, providing that the 20% discount privilege of senior citizens shall not be limited to the purchase of unbranded generic medicine but shall extend to both prescription and non-prescription medicine, whether branded or generic, is valid. When conditions so demand, as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by the due process clause, must yield to the general welfare [*Carlos Superdrug Corporation v. DSWD, et al.*, G.R. No. 166494, June 29, 2007].

3. *Who may exercise the power.* The power is inherently vested in the Legislature. However, Congress may validly delegate this power to the President, to administrative bodies and to lawmaking bodies of local government units. Local government units exercise the power under the general welfare clause [Sec. 16, R.A. 7160], and under Secs. 391, 447, 458 and 468, R.A. 7160. . .

a) While police power may be validly delegated to the President by law, R.A. 6939 and P.D. 260, as amended, do not authorize the President, or any other administrative body, to take over the internal management of a cooperative. Accordingly, Memorandum Order No. 409, issued by the President, constituting an *ad hoc* committee to temporarily take over and

manage the affairs of CANORECO is invalid [*Camarines Norte Electric Cooperative v. Torres, G.R. No. 127249, February 27, 1998*].

b) Unlike the legislative bodies of local government units, there is no provision in R.A. 7924 that empowers the Metro Manila Development Authority (MMDA) or its Council to “enact ordinances, approve resolutions and appropriate funds for the general welfare” of the inhabitants of Metro Manila. Thus, MMDA may not order the opening of Neptune St. in the Bel-Air Subdivision to public traffic, as it does not possess delegated police power [*Metro Manila Development Authority v. Bel-Air Village Association, G.R. No. 135962, March 27, 2000*]. While Sec. 5(f), R.A. 7924, does not grant the MMDA the power to confiscate and suspend or revoke drivers’ licenses without need of any other legislative enactment, the same law vests the MMDA with the duty to enforce existing traffic rules and regulations. Thus, where there is a traffic law or regulation validly enacted by the legislature or those agencies to whom legislative power has been delegated (the City of Manila, in this case), the MMDA is not precluded — and in fact is duty-bound — to confiscate and suspend or revoke drivers’ licenses in the exercise of its mandate of transport and traffic management, as well as the administration and implementation of all traffic enforcement operations, traffic engineering services and traffic education programs [*Metropolitan Manila Development Authority v. Garin, G.R. No. 130230, April 15, 2005*]

In *Francisco v. Fernando, G.R. No. 166501, November 16, 2006*, a petition for prohibition and mandamus was filed against the MMDA and its Chairman, Bayani Fernando, to enjoin the further implementation of the “Wet Flag Scheme” and to compel respondents to “respect and uphold” the pedestrians’ right to due process and right to equal protection of the law. (As implemented, police mobile units bearing wet flags with words “*Maglakad and mag-abang sa bangketa*” are deployed along major Metro Manila thoroughfares.) It was held that the petitioner failed to show the lack of basis or the unreasonableness of the Wet Flag Scheme. On the alleged lack of legal basis, the Court noted that all the cities and municipalities within MMDA’s jurisdiction except Valenzuela City have each enacted anti-jaywalking ordinances or traffic management codes with provisions for pedestrian regulation. This serves as sufficient basis for the respondent’s implementation of schemes to enforce the anti-jaywalking ordinances and similar regulations. The MMDA is an administrative agency tasked with the implementation of rules and regulations enacted by proper authorities. The absence of an anti-jaywalking ordinance in Valenzuela City does not detract from this conclusion absent any proof that respondents implemented the Flag Scheme in that city.

c) While concededly, the President has the authority to provide for the establishment of the Greater Manila Mass Transport System, in order

to decongest traffic by eliminating bus terminals along major Metro Manila thoroughfares, EO No. 179, which designates the Metro Manila Development Authority as the implementing agency for the project, is *ultra vires*. Under the provisions of EO 125, as amended, it is the DOTC, not the MMDA, which is authorized to establish and implement such a project. The President must exercise the authority through the instrumentality of the DOTC which, by law is the primary implementing and administrative entity in the promotion, development and regulation of networks of transportation. By designating the MMDA as the implementing agency, the President overstepped the limits of the authority conferred by law [*Metropolitan Manila Development Authority v. Viron Transportation, G.R. No. 170656, August 15, 2007*].

4. Limitations (Tests for Valid Exercise):

a) Lawful subject: The interests of the public in general as distinguished from those of a particular class, require the exercise of the power. This means that the activity or property sought to be regulated affects the general welfare; if it does, then the enjoyment of the rights flowing therefrom may have to yield to the interests of the greater number. See *Taxicab Operators v. Board of Transportation*, 119 SCRA 597; *Velasco v. Villegas*, 120 SCRA 568; *Bautista v. Juinio*, 127 SCRA 329; *Lozano v. Martinez*, 146 SCRA 323; *Sangalang v. Intermediate Appellate Court*, 176 SCRA 719.

i) In *Lim v. Pacquing*, 240 SCRA 649, it was held that P.D. 771, which expressly revoked all existing franchises and permits to operate all forms of gambling facilities (including jai-alai) issued by local governments, was a valid exercise of the police power. Gambling is essentially antagonistic to the objectives of national productivity and self-reliance; it is a vice and a social ill which the government must minimize (or eradicate) in pursuit of social and economic development. *Miners Association of the Philippines v. Factoran*, 240 SCRA 100, upheld the validity of Administrative Orders Nos. 57 and 82 of the DENR Secretary which effectively converted existing mining leases and other mining agreements into production-sharing agreements within one year from effectiveness, inasmuch as the subject sought to be governed by the questioned orders is germane to the objects and purposes of E.O 279, and that mining leases or agreements granted by the State are subject to alterations through a reasonable exercise of the police power of the State.

ii) In *Pollution Adjudication Board v. Court of Appeals*, 195 SCRA 112, the Supreme Court held that *ex parte* cease and desist orders issued by the Pollution Adjudication Board are permitted by law and regulations in situations such as stopping the continuous discharge of pollutive and untreated effluents into the rivers and other inland waters. The relevant pollution control

statute and implementing regulations were enacted and promulgated in the exercise of police power, x x x The ordinary requirements of procedural due process yield to the necessities of protecting vital public interests through the exercise of police power.

b) Lawful Means: The means employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals. See: *Ynot v. Intermediate Appellate Court*, 148SCRA 659; *Tablarin v. Gutierrez*, 152 SCRA 730; *Balacuit v. CFI of Agusan del Norte*, 163 SCRA 182.

i) Police power concerns government enactments, which precisely interfere with personal liberty or property to promote the general welfare or the common good. A thorough review of the facts and circumstances leading to the issuance of DOLE Order No. 3 (establishing various procedures and requirements for screening performing artists as a prerequisite to the processing of any contract of employment by POEA) shows that the assailed order was issued by the Secretary of Labor pursuant to a valid exercise of the police power [*JMM Promotion and Management, Inc. v. Court of Appeals*, 260 SCRA 319].

ii) However, Sec. 2 of Comelec Resolution No. 2772, which mandates newspapers of general circulation in every province or city to provide free print space of not less than 1/2 page as Comelec space, was held to be an invalid exercise of the police power in *Philippine Press Institute v. Comelec*, 244 SCRA 272, there being no showing of the existence of a national emergency or imperious public necessity for the taking of print space, nor that the resolution was the only reasonable and calibrated response to such necessity. [This was held to be an exercise of the power of eminent domain, albeit invalid, because the Comelec would not pay for the space to be given to it by the newspapers.] Similarly, in *City Government of Quezon City v. Ericta*, 122 SCRA 759, the Quezon City ordinance which required commercial cemetery owners to reserve 6% of burial lots for paupers in the City was held to be an invalid exercise of the police power, but was, instead, an exercise of the power of eminent domain which would make the City liable to pay the owners just compensation.

iii) The proper exercise of the police power requires compliance with the following requisites: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference by the State; and (b) the means employed are reasonably necessary for the attainment of the object sought and not unduly oppressive upon individuals. An ordinance aimed at relieving traffic congestion meets the first standard; but declaring bus terminals as nuisances *per se* and ordering their closure or

relocation contravenes the second standard [*Lucena Grand Central Terminal v. JAC Liner, G.R. NO. 148339, February 23, 2005*].

iv) In *Cabrera v. Lapid, G.R. No. 129098, December 6, 2006*, the Supreme Court upheld the dismissal by the Office of the Ombudsman of criminal charges against respondents local government officials who had ordered and carried out the demolition of a fishpond which purportedly blocked the flow of the Pasak River in Sasmuan, Pampanga. The Court agreed with the findings of the Ombudsman that “those who participated in the blasting of the subject fishpond were only impelled by their desire to serve the best interest of the general public”.

5. *Additional Limitations* [When exercised by delegate]:

a) Express grant by law [e.g., Secs. 16, 391,447, 458 and 468, R. A. 7160, for local government units]

b) Within territorial limits [for local government units, except when exercised to protect water supply],

c) Must not be contrary to law. [Activity prohibited by law cannot, in the guise of regulation, be allowed; an activity allowed by law may be regulated, but not prohibited.] See: *De la Cruz v. Paras, 123 SCRA 569; City Government of Quezon City v. Ericta, 122 SCRA 759; Villacorta v. Bernardo, 143 SCRA 480*.

i) In *Solicitor General v. Metropolitan Manila Authority, G.R. No. 102782, December 11, 1991*, reiterated in *Tatelyv. Municipality of Virac, G.R. No. 40243, March 11, 1992*, and in *Magtajas v. Pryce Properties, G.R. No. 111097, July 20, 1994*, the Supreme Court declared that for municipal ordinances to be valid, they: [a] must not contravene the Constitution or any statute; [b] must not be unfair or oppressive; [c] must not be partial or discriminatory; [d] must not prohibit, but may regulate, trade; [e] must not be unreasonable; and [f] must be general in application and consistent with public policy.

ii) In *City of Manila v. Judge Laguio, G.R. No. 118127, April 12, 2005*, the Supreme Court declared as an invalid exercise of the police power City of Manila Ordinance No. 7783, which prohibited “the establishment or operation of businesses providing certain forms of amusement, entertainment, services and facilities in the Ermita-Malate area”. Concededly, the ordinance was enacted with the best of motives and shares the concern of the public for the cleansing of the Ermita-Malate area of its social sins. Despite its virtuous aims, however, the enactment of the ordinance has no statutory or constitutional

authority to stand on. Local legislative bodies cannot prohibit the operation of sauna and massage parlors, karaoke bars, beerhouses, night clubs, day clubs, supper clubs, discotheques, cabarets, dance halls, motels and inns, or order their transfer or conversion without infringing the constitutional guarantees of due process and equal protection of the laws, not even in the guise of police power.

iii) The authority of a municipality to issue zoning classification is an exercise of the police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs [*Pasong Bayabas Farmers Association v. Court of Appeals, G.R. Nos. 142359 and 142980, May 25, 2004*].

C. Power of Eminent Domain

1. *Definition/Scope.* Also known as the power of expropriation,

a) See: Sec. 9, Art. III; Sec. 18, Art. XII; Secs. 4 & 9, Art. XIII.

b) *Distinguished from police power.* Police power is the power of the State to promote public welfare by restraining and regulating the use of liberty and property. The power of eminent domain is the inherent right of the State to condemn private property to public use upon payment of just compensation. Although both police power and eminent domain have the general welfare for their object, and recent trends show a mingling of the two with the latter being used as an implement of the former, there are still traditional distinctions between the two. Property condemned under police power is usually noxious or intended for a noxious purpose, hence no compensation is paid. Likewise in the exercise of police power, property rights of individuals are subjected to restraints and burdens in order to secure the general comfort, health and prosperity of the State. Where a property interest is merely restricted because the continued use thereof would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is need to pay just compensation. In the exercise of police power, the State restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owners is limited, but no aspect of the property is used by or for the benefit of the public. The deprivation of use can, in fact, be total, and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein. If, however, in the regulation of

the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking [*Didipio Earth-Savers MultiPurpose Association v. Gozun*, G.R. No. 157882, March 30, 2006].

c) It is well settled that eminent domain is an inherent power of the State that need not be granted even by the fundamental law. Sec. 9, Art. III of the Constitution, in mandating that "private property shall not be taken for public use without just compensation", merely imposes a limit on the government's exercise of this power and provides a measure of protection to the individual's right to property. An ejectment suit should not ordinarily prevail over the State's power of eminent domain [*Republic v. Tagle*, G.R. No. 129079, December 2, 1998] .

d) The acquisition of an easement of a right of way falls within the purview of the power of eminent domain [*Camarines Norte Electric Cooperative v. Court of Appeals*, G.R. No. 109338, November 20, 2000]. In *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 437 SCRA 60, it was reiterated that an action for a right of way filed by an electric power company for the construction of transmission lines falls within the scope of the power of eminent domain. As held in *Republic v. PLDT*, 26 SCRA 620, the power of eminent domain normally results in the taking or appropriation of title to, and possession of, the expropriated property. But no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title or possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of a right of way.

e) Jurisdiction over a complaint for eminent domain is with the Regional Trial Court. While the value of the property to be expropriated is estimated in monetary terms — for the court is duty bound to determine the amount of just compensation to be paid for the property — it is merely incidental to the expropriation suit [*Barangay San Roque, Talisay, Cebu v. Heirs of Francisco Pastor*, G.R. No. 138896, June 20, 2000]. This is reiterated in *Bardillon v. Barangay Masili of Calamba, Laguna*, G.R. No. 146886, April 30, 2003.

f) In expropriation cases, there is no such thing as the plaintiff's matter of right to dismiss the complaint, precisely because the landowner may have already suffered damages at the start of the taking. The plaintiff's right in expropriation cases to dismiss the complaint has always been subject to court approval and to certain conditions [*National Power Corporation v. Pobre*, G.R. No. 106804, August 12, 2004]

2. Who may exercise the power. Congress and, by delegation, the President, administrative bodies, local government units, and even private enterprises performing public services.

a) Local government units have no inherent power of eminent domain; they can exercise the power only when expressly authorized by the Legislature. Sec. 19 of the Local Government Code confers such power to local governments, but the power is not absolute; it is subject to statutory requirements [*Masikip v. City of Pasig, G.R. No. 136349, January 23, 2006; Lagcao v. Judge Labra, G.R. No. 155746, October 3, 2004*]. The grant of the power of eminent domain to local government units under R.A. 7160 cannot be understood as equal to the pervasive and all-encompassing power vested in the legislative branch of government. The power of eminent domain must, by enabling law, be delegated to local governments by the national legislature, and thus, can only be as broad or confined as the real authority would want it to be [*Republic v. Court of Appeals, G.R. No. 146587, July 2, 2002*].

b) The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. Hence, strict construction will be made against the agency exercising the power. In the present case, the respondent failed to prove that before it filed its complaint, it made a written, definite and valid offer to acquire the property, as required under Sec. 19, R.A. 7160 [*Jesus is Lord Christian School Foundation v. Municipality of Pasig, G.R. No. 152230, August 9, 2005*],

c) The exercise of the power of eminent domain is clearly superior to the final and executory judgment rendered by the court in an ejection case [*Filstream International Inc. v. Court of Appeals, 284 SCRA 716*].

d) In *Iron and Steel Authority v. Court of Appeals*, 249 SCRA 538, it was held that when the statutory life of the Iron & Steel Authority (ISA), a non-incorporated entity of government, expired in 1988, its powers, duties and functions, as well as its assets and liabilities, reverted to and were re-assumed by the Republic of the Philippines, in the absence of any special provision of law specifying some other disposition thereof. Accordingly, the Republic may be substituted as party plaintiff in the expropriation proceedings originally instituted by ISA.

e) In *San Roque Realty v. Republic*, G.R. No. 163130, September 7, 2007, the Supreme Court said that time and again, we have declared that eminent domain cases are to be strictly construed against the expropriator. If the Republic had actually made full payment of just compensation, in the ordinary course of things, it would have led to the cancellation of the title or at least, the annotation

of the lien in favour of the government on the certificate of title. Thus, while the general rule is that the State cannot be put in estoppel or laches by the mistakes or errors of its officials or agents, this rule, however, admits of exceptions, one of which is when the strict application of the rule will defeat the effectiveness of a policy adopted to protect the public, such as the Torrens system.

3. *Requisites for exercise:*

a) Necessity

i) When the power is exercised by the Legislature, the question of necessity is generally a political question [*Municipality of Meycauayan, Bulacan v. Intermediate Appellate Court*, 157 SCRA 640]; but when exercised by a delegate, the determination of whether there is genuine necessity for the exercise is a justiciable question [*Republic v. La Orden de Po. Benedictinos*, 1 SCRA 649].

ii) The issue of the necessity of the expropriation is a matter properly addressed to the Regional Trial Court in the course of the expropriation proceedings. If the property owner objects to the necessity of the takeover, he should say so in his Answer to the Complaint. The RTC has the power to inquire into the legality of the exercise of the right of eminent domain and to determine whether there is a genuine necessity for it [*Bardillon v. Barangay Masili of Calamba, Laguna*, G.R. No. 146886, April 30, 2003].

iii) The foundation of the right to exercise eminent domain is genuine necessity and that necessity must be of public character. Government may not capriciously or arbitrarily choose which private property should be expropriated. In this case, there was no showing at all why petitioners' property was singled out for expropriation by the city ordinance or what necessity impelled the particular choice or selection. Ordinance No. 1843 stated no reason for the choice of petitioners' property as the site of a socialized housing project [*Lagcao v. Judge Labra*, G.R. No. 155746, October 13, 2004].

b) Private Property,

i) Private property already devoted to public use cannot be expropriated by a delegate of legislature acting under a general grant of authority [*City of Manila v. Chinese Community*, 40 Phil 349].

ii) All private property capable of ownership may be expropriated, except money and *chooses in action*. Even services may be subject to eminent domain [*Republic v. PLDT*, 26 SCRA 620].

c) Taking in the constitutional sense.

i) May include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended. In *Ayala de Roxas v. City of Manila*, 9 Phil 215, the imposition of an easement of a 3-meter strip on the plaintiff's property was considered taking. In *People v. Fajardo*, 104 Phil 44, a municipal ordinance prohibiting a building which would impair the view of the plaza from the highway was likewise considered taking. In these cases, it was held that the property owner was entitled to payment of just compensation.

ii) Thus, in *National Power Corporation v. Gutierrez*, 193 SCRA 1, the Court said that the exercise of the power of eminent domain does not always result in the taking or appropriation of title to the expropriated property; it may only result in the imposition of a burden upon the owner of the condemned property, without loss of title or possession. In this case, while it is true that the plaintiff is only after a right-of-way easement, it nevertheless perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon the defendants that below said transmission lines, no plant higher than three meters is allowed. Besides, the high-tension current conveyed by the transmission lines poses continuing danger to life and limb.

iii) In *Republic v. Castelvi*, 58 SCRA 336, the Supreme Court enumerated the following requisites for valid taking: the expropriator must enter a private property; entry must be for more than a momentary period; entry must be under warrant or color of authority; property must be devoted to public use or otherwise informally appropriated or injuriously affected; and utilization of the property must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property.

iv) Where there is taking in the constitutional sense, the property owner need not file a claim for just compensation with the Commission on Audit; he may go directly to court to demand payment [*Amigable v. Cuenca*, 43 SCRA 360; *de los Santos v. Intermediate Appellate Court*, 223 SCRA 11; *Republic v. Sandiganbayan*, 204 SCRA 212].

v) The owner of the property can recover possession of the property from squatters, even if he agreed to transfer the property to the Government, until the transfer is consummated or the expropriation case is filed [*Velarma v. Court of Appeals*, 252 SCRA 400].

d) Public use.

i) *Concept.* As a requirement for eminent domain, "public use" is the general concept of meeting public need or public exigency. It is not confined to actual use by the public in its traditional sense. The idea that "public use" is strictly limited to clear cases of "use by the public" has been abandoned. The term "public use" has now been held to be synonymous with "public interest", "public benefit", "public welfare", and "public convenience" [*Reyes v. National Housing Authority, G.R. No. 147511, January 20, 2003*].

ia) The "public use" requirement for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. It is accurate to state then that at present, whatever may be beneficially employed for the general welfare satisfies the requirement of public use [*Estate of Salud Jimenez v. PEZA, G.R. No. 137285, January 16, 2001*]. The meaning of "public use" has also been broadened to cover uses which, while not directly available to the public, redound to their indirect advantage or benefit [*Heirs of Juancho Ardona v. Reyes, 125 SCRA 220*].

ib) Thus, in *Filstream International Inc. v. Court of Appeals*, 284 SCRA 716, the fact that the property is less than Vi hectare and that only a few could actually benefit from the expropriation does not diminish its public use character, inasmuch as "public use" now includes the broader notion of indirect public benefit or advantage, including, in particular, urban land reform and housing.

ic) The practical reality that greater benefit may be derived by Iglesia ni Cristo members than most others could well be true, but such peculiar advantage still remains merely incidental and secondary in nature. That only few would actually benefit from the expropriation of the property does not necessarily diminish the essence and character of public use [*Manosca v. Court of Appeals, 252 SCRA 412*].

ii) *When exercised by a local government unit.* By express legislative authority granted by Congress in Sec. 19, RA 7160, local government units may expropriate private property for public use, or purpose, or welfare, for the benefit of the poor and the landless. Thus, in *Moday v. Court of Appeals*, 268 SCRA 568, the Supreme Court held that the Sangguniang Panlalawigan (of Agusan del Sur) was without authority to disapprove Bunawan Municipal Resolution No. 43-89 because, clearly, the Municipality of Bunawan has the authority to exercise the power of eminent domain and its Sangguniang Bayan the capacity to promulgate the assailed resolution.

iia) However, note that in *Municipality of Paranaque v. V. M. Realty Corporation*, 292 SCRA 676, the Supreme Court declared that there was lack of compliance with Sec. 19, R.A. 7160, where the Municipal Mayor filed a complaint for eminent domain over two parcels of land on the strength of a resolution passed by the Sanggunian Bayan, because what is required by law is an ordinance.

iib) In *Lagcao v. Judge Labra*, G.R. No. 155746, October 13, 2004, the Supreme Court said that condemnation of private lands in an irrational or piecemeal fashion, or the random expropriation of small lots to accommodate no more than a few tenants or squatters, is certainly not the condemnation for public use contemplated by the Constitution. This deprives a citizen of his property for the convenience of a few without perceptible benefit to the public. Moreover, prior to the passage of Ordinance No. 1843, there was no evidence of a valid and definite offer to buy petitioners' property, as required by Sec. 19, R.A. 7160.

e) Just compensation.

i) *Concept.* The full and fair equivalent of the property taken; it is the fair market value of the property. It is settled that the market value of the property is "that sum of money which a person, desirous but not compelled to buy, and an owner, willing but not compelled to sell, would agree on as a price to be given and received therefor".

ia) The aforementioned rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to payment of the market value of the portion actually taken. In addition to the market value of the portion taken, he is also entitled to payment of consequential damages, if any, to the remaining part of the property. At the same time, from the total compensation must be deducted the value of consequential benefits, if any, provided consequential benefits shall not exceed consequential damages [*National Power Corporation v. Spouses Chiong*, G.R. No. 152436, June 20, 2003].

ib) Just compensation means not only the correct amount to be paid to the owner of the land but also payment within a reasonable time from its taking [*Eslaban v. De Onorio*, G.R. No. 146062, June 28, 2001].

ic) The tax credit given to commercial establishments for the discount enjoyed by senior citizens pursuant to R.A. 7432 (Senior Citizens Act) is a form of just compensation for private property taken by the State for public use, since the privilege enjoyed by senior citizens does not come directly from

the State, but from the private establishments concerned [*Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 148512, June 26, 2006; *Commissioner of Internal Revenue v. Bicolandia Drug Corporation*, G.R. No. 148083, July 21, 2006],

ii) *Judicial prerogative.* The ascertainment of what constitutes just compensation for property taken in eminent domain cases is a judicial prerogative, and PD 76, which fixes payment on the basis of the assessment by the assessor or the declared valuation by the owner, is unconstitutional [*EPZA v. Dulay*, 148 SCRA 305]. PD 1533 and PD 42, insofar as they sanction executive determination of just compensation in eminent domain cases, are unconstitutional [*Panes v. Visayas State College of Agriculture*, 263 SCRA 708]. Another Presidential Decree (PD 1670) which authorizes the City Assessor to fix the value of the property is also unconstitutional [*Belen v. Court of Appeals*, 195 SCRA 59]. This declaration of unconstitutionality may be given retroactive effect [*Republic v. Court of Appeals*, 227 SCRA 401].

iiia) In *Republic (DAR) v. Court of Appeals*, 263 SCRA 758, it was held that under R.A. 6657 (CARL), the decision of the provincial adjudicator need not be appealed to the DARAB before resort may be made to the RTC. The RTC, as special agrarian court, is given original and exclusive jurisdiction over two categories of cases, namely: (1) all petitions for the determination of just compensation to landowners; and (2) the prosecution of all criminal offenses under R.A. 6657.

iiii) *Need to appoint commissioners.* In *Manila Electric Co. v. Pineda*, 206 SCRA 196, the Supreme Court held that in an expropriation case where the principal issue is the determination of the amount of just compensation, a trial before the commissioners is indispensable, in order to give the parties the opportunity to present evidence on the issue of just compensation. Trial with the aid of commissioners is a substantial right that may not be done away with capriciously or for no reason at all.

iiia) While commissioners are to be appointed by the court for the determination of just compensation, the latter is not bound by the commissioners' findings [*Republic v. Santos*, 141 SCRA 30; *Republic (MECS) v. Intermediate Appellate Court*, 185 SCRA 572]. However, the court may substitute its own estimate of the value of the property only for valid reasons, to wit: (a) the commissioners have applied illegal principles to the evidence submitted to them; (b) they have disregarded a clear preponderance of evidence; or (c) where the amount allowed is either grossly inadequate or excessive [*National Power Corporation v. De la Cruz*, G.R. No. 156093, February 2, 2007].

iiib) But trial by commissioners is not mandatory in agrarian reform cases, because Sec. 58 of R.A. 6657 provides that the appointment of a commissioner or commissioners is discretionary on the part of the special agrarian court (SAC), or upon the instance of one of the parties. Thus, the modality provided in Rule 67 of the Rules of Court for the appointment of 3 commissioners is not compulsory on the SAC [*Spouses Edmond Lee and Helen Huang v. Land Bank of the Philippines*, G.R. No. 170422, March 7, 2008].

iv) *Form of compensation.* Compensation is to be paid in money and no other. But in *Association of Small Landowners v. Secretary of Agrarian Reform, supra.*, 175 SCRA 343, it was held that in agrarian reform, payment is allowed to be made partly in bonds, because under the CARP, “we do not deal with the traditional exercise of the power of eminent domain; we deal with a revolutionary kind of expropriation”.

iva) However, in *Land Bank v. Court of Appeals* (and *Department of Agrarian Reform v. Court of Appeals*), 249 SCRA 149, reiterated in *Sta. Rosa Realty & Development Corp. v. Court of Appeals*, G.R. No. 112526, October 12, 2001, the Court declared that, as explicitly provided by Sec. 16(e), R.A. 6657, the deposit of compensation must be in “cash” or in “Land Bank bonds”, not in any other form, and certainly not in a “trust account”. While the *Association* ruling allowed a deviation in the traditional mode of payment other than cash, this did not dispense with the settled rule that there must be payment of just compensation before the title to the expropriated property is transferred. Thus, in the *Resolution on the Motion for Reconsideration*, 258 SCRA 404, the Court said that upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by DAR of the compensation *in cash or in Land Bank bonds* in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title in the name of the Republic of the Philippines. The provision is very clear and unambiguous, foreclosing any doubt as to allow an expanded construction, which would include the opening of “trust accounts” within the coverage of the term “deposit”.

v) *Withdrawal of deposit by rejecting landowner.* In the same *Resolution on the Motion for Reconsideration [Land Bank v. Court of Appeals]*, the Supreme Court also allowed the withdrawal by the rejecting landowner of the money deposited in trust pending the determination of the valuation of the property. By rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. If we are to affirm the withholding of the release of the offered compensation despite depriving the

owner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right. Without prompt payment, compensation cannot be considered “just”, for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. To allow the taking of the landowners’ properties, and in the meantime leave them empty-handed by withholding payment of just compensation while the government speculates on whether or not it will pursue expropriation, or worse, for government to subsequently decide to abandon the property and return it to the landowner when it has already been rendered useless by *force majeure*, is undoubtedly an oppressive exercise of eminent domain that must never be sanctioned.

vi) *Reckoning point of market value of the property.* Compensation is determined as of the date of the filing of the complaint for eminent domain, but where the filing of the complaint occurs after the actual taking of the property and the owner would be given undue incremental advantages arising from the use to which the government devotes the property expropriated, just compensation is determined as of the date of the taking [*National Power Corporation v. Court of Appeals*, 254 SCRA 577]. See also: *Republic v. Lara*, 50 O.G. 5778; *Republic v. Castelvi*, 58 SCRA 336; *Commissioner of Public Highways v. Burgos*, 96 SCRA 831; *National Power Corporation v. Gutierrez*, *supra*; *Belen v. Court of Appeals*, 195 SCRA 59.

via) However, in *Eslaban v. De Onorio*, G.R. No. 146062, June 28, 2001, the Supreme Court said that in the instances where the appropriating agency takes over the property prior to the expropriation suit, just compensation shall be determined as of the time of the taking, not as of the time of the filing of the complaint for eminent domain. Thus, it was declared that the value of the property must be determined either as of the date of the taking or the filing of the complaint, “whichever comes first”.

vib) It should be noted that the principal criterion in determining just compensation is the character of the land at the time of the taking. In *National Power Corporation v. Henson*, G.R. No. 129998, December 29, 1998, where the trial judge based his computation-on the price of lots in the adjacent developed subdivision — although the five parcels were agricultural but later reclassified as residential — the Supreme Court said that the trial judge had no valid basis for his computation. The tax declaration is only one of the factors to be used in determining the market value of the property for purposes of arriving at the amount to be paid by way of just compensation [*Republic v. Ker & Co.*, G.R. No. 136171, July 2, 2002].

vie) When eminent domain is exercised by a local government unit, 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" [Sec. 19, R.A. 7160]. This was applied in *City of Cebu v. Spouses Dedamo*, G.R. No. 142971, May 7, 2002, precisely because the expropriator was the City of Cebu, a local government unit, and the Rules of Court cannot prevail over R.A. 7160, a substantive law. In *Nepomuceno v. City of Surigao*, G.R. No. 146091, July 28, 2008, it was held that the value of the property shall be ascertained as of the date it was actually taken, because it is as of that time that the real measure of the owner's loss may be fairly adjudged.

vii) *Entitlement of owner to interest.* In *Nepomuceno v. City of Surigao*, *supra.*, it was held that once the value of the property is fixed by the court, the amount shall earn interest at the legal rate until full payment is effected. *National Power Corporation v. Angas*, 208 SCRA 542, fixes the interest due the property owner at the rate of 6% per annum, prescribed in Art. 2209 of the Civil Code, and not 12% per annum under Central Bank Circular No. 416, because the latter applies to loans or forbearance of money, goods or credits, or judgments involving such loans or forbearance of money goods or credits. The kind of interest involved here is by way of damages, hence Art. 2209 of the Civil Code applies.

viii) In some expropriation cases, the Court imposed an interest of 12% per annum on the just compensation due the landowner. It must be stressed, however, that in these cases, the imposition of interest was in the nature of damages for delay in payment which, in effect, makes the obligation on the part of government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation. Conversely, where there was delay in tendering a valid payment of just compensation, imposition of interest is in order. In this case, the replacement of the trust account with cash or LBP bonds did not *ipso facto* cure the lack of compensation, for essentially, the determination of this compensation was marred by the lack of due process. Thus, the compensation due Wycoco should bear 12% interest per annum from the time LBP opened a trust account in his name up to the time said account was actually converted into cash and LBP bonds [*Wycoco v. Judge Caspillo*, G.R. No. 146733, January 13, 2004].

viii) *Who else may be entitled to just compensation.* Entitlement to the payment of just compensation is not, however, limited to the "owner", but includes all those who have lawful interest in the property to be condemned, including a mortgagee, a lessee and a vendee in possession under an executory contract. But where, as in this case, the intervenors had no longer

any legal interest in the property because at the time of the expropriation their claim of ownership had already been resolved and put to rest, then they are not entitled to be impleaded as parties or to payment of just compensation [*Knechtv. Court of Appeals*, G.R. No. 108015, May 20, 1998],

ix) *Title to the property.* Title does not pass until after payment [*Visayan Refining v. Camus*, 40 Phil 550], except in agrarian reform [*Resolution on Motion for Reconsideration, Land Bank v. Court of Appeals*, 258 SCRA 404].

ixa) Thus, the owner of land subject to expropriation may still dispose of the same before payment of just compensation [*Republic v. Salem Investment Corporation*, G.R. No. 137569, June 23, 2000].

ixb) Taxes paid by owner after taking by the expropriator are reimbursable [*City of Manila v. Roxas*, 60 Phil 215].

x) *Right of landowner in case of non-payment of just compensation.* As a rule, "non-payment of just compensation in an expropriation proceeding does not entitle the private landowners to recover possession of the expropriated lots", but only to demand payment of the fair market value of the property [*Republic of the Philippines v. Court of Appeals*, G.R. No. 146587, July 2, 2002; *Reyes v. National Housing Authority*, G.R. No. 147511, January 20, 2003].

xa) However, in *Republic of the Philippines v. Vicente Lim*, G.R. No. 161656, June 29, 2005, the Supreme Court said that the facts of the case do not justify the application of the rule. In this case, the Republic was ordered to pay just compensation twice, the first was in the expropriation proceedings, and the second, in the action for recovery of possession, but it never did. Fifty seven (57) years passed since the expropriation case was terminated, but the Republic never paid the owners. The Court construed the Republic's failure to pay just compensation as a deliberate refusal on its part. Under such circumstances, recovery of possession is in order. *It was then held that where the government fails to pay just compensation within five years from the finality of the judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property.*

f) *Due process of law.* The defendant must be given an opportunity to be heard. In *Belen v. Court of Appeals*, *supra*., the Supreme Court declared PDs 1670 and 1669 unconstitutional for violating the due process clause because the decrees do not provide for any form of hearing or procedure by which the petitioners can question the propriety of the expropriation or the

reasonableness of the compensation to be paid for the property. See also *Filstream International, Inc. v. Court of Appeals*, 284 SCRA 716.

4. *Writ of Possession.* The issuance of the writ of possession becomes ministerial upon the [i] filing of a complaint for expropriation sufficient in form and substance, and [ii] upon deposit made by the government of the amount equivalent to fifteen percent (15%) of the fair market value of the property sought to be expropriated per current tax declaration [*Biglang-Awa v. Judge Bacalla*, G.R. Nos. 139927-139936, November 22, 2000; *Bardillon v. Barangay Masili of Calamba, Laguna, supra*]. The determination of whether the taking of the property is for a public purpose is not a condition precedent before the court may issue a writ of possession. Once the requisites mentioned above are established, the issuance of the writ becomes a ministerial matter for the expropriation court [*Francia, Jr. v. Municipality of Meycauayan*, G.R. No 170432, March 24, 2008].

a) A hearing will have to be held to determine whether or not the expropriator complied with the requirements of R.A. 7279. It is, therefore, premature for the Court of Appeals to insist on finding whether petitioner resorted to the other modes of acquisition provided in RA 7279, as this question will have to await the hearing on the complaint itself [*City of Manila v. Serrano*, G.R. No. 142302, June 20, 2001]. This hearing, however, is not a hearing to determine if a writ of possession is to be issued, but whether there was compliance with the requirements for socialized housing. Once the two requisites above are complied with, then the writ of possession shall issue as a ministerial duty [*City of Iloilo v. Judge Legaspi*, G.R. No. 154616, November 25, 2004].

5. *Plaintiff's right to dismiss the complaint in eminent domain.* In expropriation cases, there is no such thing as the plaintiff's "matter-of-right" to dismiss the complaint, precisely because the landowner may have already suffered damages at the start of the taking. The plaintiff's right to dismiss the complaint has always been subject to Court approval and to certain conditions [*National Power Corporation & Pobre v. Court of Appeals*, G.R. No 106804 August 12, 2004].

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6. *Right to repurchase or re-acquire the property.* In *Mactan-Cebu International Airport Authority v. Court of Appeals*, G.R. No. 139495, November 27, 2000, it was held that the property owner's right to repurchase the property depends upon the character of the title acquired by the expropriator, i.e., if land is expropriated for a particular purpose with the condition that when that purpose is ended or abandoned, the property shall revert to the former owner, then the former owner can re-acquire the

of the judgment in the expropriation case were very clear and unequivocal, granting title to the lot in fee simple to the Republic. No condition on the right to repurchase was imposed.

a) In arguing for the return of their property on the basis of nonpayment, respondents ignore the fact that the right of the expropriatory authority is different from that of an unpaid seller in ordinary sales to which the remedy of rescission may perhaps apply. Expropriation is an *in rem* proceeding, and after condemnation, the paramount title is in the public under a new and independent title [*Republic v. Court of Appeals, G.R. No. 146587, July 2, 2002*].

7. *Expropriation under Sec. 18, Art. XII: "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".*

a) Distinguish this from Sec. 17, Art. XII: "*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*".

i) In *Agan, Jr. v. Philippine International Air Terminals Co., G.R. No. 155001, Baterina v. Philippine International Air Terminals Co., G.R. No. 155547, Lopez v. Philippine International Air Terminals Co., G.R. No. 155661, May 05, 2003*, the Supreme Court said that PIATCO cannot, by mere contractual stipulation, contravene this constitutional provision, and obligate the government to pay "reasonable cost for the use of the Terminal and/or Terminal complex". The constitutional provision envisions a situation wherein the exigencies of the times necessitate the government to "temporarily take over or direct the operation of any privately owned public utility or business affected with public interest". It is the welfare and interest of the public which is the paramount consideration in determining whether or not to temporarily take over a particular business. Clearly, the State, in effecting the temporary takeover is exercising its police power.

ii) Note that the temporary takeover by the government extends only to the operation of the business and not to the ownership thereof. As such, the government is not required to compensate the private entity-owner of the said business as there is no transfer of ownership, whether permanent or temporary. The private entity-owner affected by the temporary takeover cannot, likewise, claim just compensation for the use of said business and

its properties, as the temporary takeover by the government is in exercise of the police power and not the power of eminent domain [*Agan, Jr. v. PIATCO, supra.*].

iii) In *David v. Macapagal-Arroyo, supra.*, the Court declared that Sec. 17, Art. XII must be understood as an aspect of the emergency powers clause. The taking over of private businesses affected with public interest is just another facet of the emergency powers generally reposed in Congress. Thus, when Sec. 17, Art. XII, provides that "*The State may, during the emergency and under reasonable terms and conditions prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest*", it refers to Congress, not the President. Whether the President may exercise such power is dependent on whether Congress delegates it to the former pursuant to a law prescribing the reasonable terms thereof.

8. Expropriation under Secs. 4 and 9, Art. XIII.

a) Comprehensive Agrarian Reform Law. See *Association of Small Landowners v. Secretary of Agrarian Reform, supra.*, on the constitutionality of the Comprehensive Agrarian Reform Law, being an exercise of the police power of the State, using eminent domain as an instrument to accomplish the police objective. In *Sta. Rosa Realty & Development Corp. v. Court of Appeals, G.R. No. 112526, October 12, 2001*, it was held that to the extent that the CARL prescribes retention limits to the landowners, there is an exercise of the police power for the regulation of private property in accordance with the Constitution. But where to carry out such regulation, the owners are deprived of lands they own in excess of the maximum area allowed, there is also taking under the power of eminent domain. The taking contemplated is not a mere limitation on the use of the land, but the surrender of the title to and physical possession of the excess and all beneficial rights accruing to the owner in favor of the beneficiary. See also *Paris v. Alfeche, G.R. No. 139083, August 30, 2001*, on the validity of the retention limits.

b) R.A. 7279 fUrban Development and Housing Act of 1992j.

i) In *Filstream International Inc. v. Court of Appeals, 284 SCRA 716*, the Court took judicial notice of the fact that urban land reform has become a paramount task of Government in view of the acute shortage of decent housing in urban areas, particularly in Metro Manila. Nevertheless, local government units are not given an unbridled authority when exercising this power in pursuit of solutions to these problems. The basic rules still have to be followed, i.e., Sec. 1 and Sec. 9, Art. III of the Constitution. Thus, even

Sec. 19 of the Local Government Code imposes certain restrictions on the exercise of the power of eminent domain. R.A. 7279 (Urban Development and Housing Act of 1992) — the governing law which deals with the subject of urban land reform and housing — provides the order in which lands may be acquired for socialized housing, and very explicit in Secs. 9 and 10 thereof is the fact that privately-owned lands rank last (6th) in the order of priority for purposes of socialized housing. Expropriation proceedings may, therefore, be resorted to only when the other modes of acquisition have been exhausted. Compliance with these conditions must be deemed mandatory because they are the only safeguards in securing the right of owners of private property to due process when their property is expropriated for public use. This was reiterated in *Lagcao v. Judge Labra, G.R. No. 155746, October 13, 2004*.

ii) In *City of Mandaluyong v. Francisco, G.R. No. 137152, January 29, 2001*, the Supreme Court reiterated that under RA 7279, lands for socialized housing are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered, abandoned or idle lands; (4) lands within the declared Areas for Priority Development, Zonal Improvement Program sites, Slum Improvement and Resettlement sites which have not yet been acquired; (5) BLISS sites which have not yet been acquired; and (6) privately owned lands. The mode of expropriation is subject to two conditions, namely: [a] it shall be resorted to only when the other modes of acquisition have been exhausted; and [b] parcels owned by small property owners are exempt from such acquisition. Small property owners are [1] owners of residential lands with an area not more than 300 sq. m. in highly urbanized cities and not more than 800 sq. m. in other urban areas; and [2] they do not own residential property other than the same. In this case, the respondents fall within the classification of small property owners.

D. Power of Taxation

1. *Definition; nature and scope of power.*
2. *Who may exercise.* Primarily, the legislature; also: local legislative bodies [Sec. 5, Art. X, Constitution]; and to a limited extent, the President when granted delegated tariff powers [Sec. 28 (2), Art. VI].
3. *Limitations on the exercise.*
 - a) Due process of law: tax should not be confiscatory.
 - i) With the legislature primarily lies the discretion to determine the nature, object, extent, coverage and situs of taxation. But where a tax

measure becomes so unconscionable and unjust as to amount to confiscation of property, courts will not hesitate to strike it down, for despite all its plenitude, the power to tax cannot override constitutional prescriptions. This postulate, however, has not been demonstrated in the challenge to the constitutionality of the Simplified Net Income Taxation Scheme (SNITS) [*Tan v. del Rosario*, 237 SCRA 324].

b) Equal protection clause: Taxes should be uniform and equitable [Sec. 28 (1), Art. VI].

c) Public purpose. See: *Pascual v. Secretary of Public Works and Communications, infra..*

i) Tax for special purpose [Sec. 29 (3), Art. VI]: Treated as a special fund and paid out for such purpose only; when purpose is fulfilled, the balance, if any, shall be transferred to the general funds of the Government. See: *Osmena v. Orbos*, 220 SCRA 703.

4. *Double Taxation*. Additional taxes are laid on the same subject by the same taxing jurisdiction during the same taxing period and for the same purpose. See: *Punzalan v. Municipal Board of Manila*, 95 Phil 46.

a) Despite lack of specific constitutional prohibition, double taxation will not be allowed if the same will result in a violation of the equal protection clause.

5. *Tax Exemptions. Requisite*: No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress [Sec. 28 (4), Art. VI, *Constitution*].

a) Sec. 28 (3) Art. VI: Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings and improvements, actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation.

b) Sec. 4 (3) Art. XIV: 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, x x x Proprietary educational institutions, including those co-operatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.

c) Sec. 4 (41 Art. XIV): Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly and exclusively for educational purposes shall be exempt from tax.

d) Where tax exemption is granted gratuitously, it may be revoked at will; but not if granted for a valuable consideration. See *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667; *Casanova v. Hord*, 8 Phil 125; *Lladoc v. Commissioner of Internal Revenue*, 14 SCRA 292.

6. *Police Power v. Taxation*. In *Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007, the Court made a conservative and pivotal distinction between police power and taxation, holding that the distinction rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax. Thus, the Supreme Court concluded that the Universal Charge imposed under Sec. 34 of the EPIRA is an exaction that invokes the State's police power, particularly its regulatory dimension, gleaned from Sec. 34 itself which enumerates the purposes of the Universal Charge which can be amply discerned as regulatory in character.

a) License fee v. Tax

i) License fee is a police measure; tax is a revenue measure.

ii) Amount collected for a license fee is limited to the cost of permit and reasonable police regulation [except when the license fee is imposed on a non-useful occupation, as in *Physical Therapy Organization v. Municipal Board of Manila, infra.*; amount of tax may be unlimited provided it is not confiscatory].

iii) License fee is paid for the privilege of doing something, and may be revoked when public interest so requires; Tax is imposed on persons or property for revenue. See: *Compania General de Tabacos v. City of Manila*, 8 SCRA 367.

b) Kinds of license fee

i) For useful occupations or enterprises.

ii) For non-useful occupations or enterprises. When a license fee is imposed in order to discourage non-useful occupations or enterprises, the amount imposed may be a bit exorbitant [*Physical Therapy Organization v. Municipal Board of Manila, infra.*].

7. *Supremacy of the national government over local governments in taxation.* When local governments invoke the power to tax on national government instrumentalities, the exercise of the power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax [*Manila International Airport Authority (MIAA) v. Court of Appeals, G.R. No. 155650, July 20, 2006*], In this case, the Supreme Court ruled that airports, lands and buildings of MIAA are exempt from real estate tax for the following reasons: (a) MIAA is not a government-owned or -controlled corporation but an instrumentality of the National Government; and (b) the real properties of MIAA are owned by the Republic of the Philippines, and thus, exempt from local taxation.

V. PRINCIPLES AND STATE POLICIES

A. Preamble

1. Does not confer rights nor impose duties.
2. Indicates authorship of the Constitution; enumerates the primary aims and aspirations of the framers; and serves as an aid in the construction of the Constitution.

B. Republicanism [Sec. 1, Art. II]: "*The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them*".

1. Essential features: representation and renovation.
2. Manifestations.
 - a) Ours is a government of laws and not of men [*Villavicencio v. Lukban*, 39 Phil 778].
 - b) Rule of the majority. [Plurality in elections]
 - c) Accountability of public officials.
 - d) Bill of Rights.
 - e) Legislature cannot pass irrepealable laws.
 - f) Separation of powers.
 - i) Purpose: To prevent concentration of authority in one person or group of persons that might lead to an irreversible error or abuse in its exercise to the detriment of republican institutions. "To secure action, to forestall overaction, to prevent despotism and to obtain efficiency" [*Pangasinan Transportation Co. v. Public Service Commission*, 40 O.G. 8th Supp. 57]. See also *Tuason v. Register of Deeds of Caloocan City*, 157 SCRA 613; *In Re: Manzano*, 166 SCRA 246.
 - ii) In *La Bugal-B'Laan Tribal Association v. Ramos*, G.R. No. 127882, December 1, 2004, the Court restrained itself from intruding into policy matters to allow the President and Congress maximum discretion in using the mineral resources of our country and in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country. "The Judiciary is loath to interfere with the due exercise by co-equal branches of government of their official functions". Let the development of the mining industry be the

responsibility of the political branches of government. The questioned provisions of R.A. 7942 (Philippine Mining Act of 1995) are not unconstitutional.

iii) Application: Not “doctrinaire” nor with “pedantic rigor”; “not independence but interdependence”.

iiia) In the absence of any administrative action taken against the RTC Judge by the Supreme Court with regard to the former’s certificate of service, the investigation conducted by the Ombudsman encroaches into the Supreme Court’s power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers [*Maceda v. Vasquez*, 221 SCRA 464].

iv) *Principle of Blending of Powers.* Instances when powers are not confined exclusively within one department but are assigned to or shared by several departments, e.g., enactment of general appropriations law.

v) *Principle of Checks and Balances.* This allows one department to resist encroachments upon its prerogatives or to rectify mistakes or excesses committed by the other departments, e.g., veto power of the President as check on improvident legislation, etc..

vi) *Role of the Judiciary.* The judicial power, as defined in Sec. 1, Art. VIII, “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”.

via) Note that when the court mediates to allocate constitutional boundaries or invalidates the acts of a coordinate body, what it upholds is not its own superiority but the supremacy of the Constitution [*Angara v. Electoral Commission*, 63 Phil 139] Read *The Power of Judicial Review*, *supra*. See also: *Aquino v. Enrile*, 59 SCRA 183; *Bondoc v. Pineda*, 201 SCRA 792.

vib) The first and safest criterion to determine whether a given power has been validly exercised by a particular department is whether or not the power has been constitutionally conferred upon the department claiming its exercise — since the conferment is usually done expressly. However, even in the absence of express conferment, the exercise of the power may be justified under the *doctrine of necessary implication*, i.e. that the grant of an express power carries with it all other powers that may be reasonably inferred from it. Note also that there are powers which although not expressly

conferred nor implied therefrom, are inherent or incidental, e.g., the President's power to deport undesirable aliens which may be exercised independently of constitutional or statutory authority, because it is an "act of State". See also: *Marcos v. Manglapus*, 178 SCRA 760, where the Supreme Court justified the action of President Aquino in banning the return of the Marcoses to the Philippines on the basis of the President's *residual powers*.

vie) Political and justiciable questions. "A purely justiciable question implies a given right, legally demandable and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law for said breach of right" [*Casibang v. Aquino*, 92 SCRA 642]. In *Tatad v. Secretary of Energy*, *supra*., the Supreme Court ruled that what the petitioners raised were justiciable questions, considering that the "statement of facts and definition of issues clearly show that the petitioners are assailing R.A. 8180 because its provisions infringe the Constitution and not because the law lacks wisdom". In *Tanada v. Angara*, *supra*., the petition seeking the nullification of the Senate concurrence of the President's ratification of the Agreement establishing the World Trade Organization (WTO), was held to present a justiciable controversy, because where an action is alleged to infringe the Constitution, it becomes not only the right but the duty of the judiciary to settle the dispute.

vic1) "The term '*political question*' connotes what it means in ordinary parlance, namely a question of policy. It refers to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure" [*Tanada v. Cuenco*, 100 Phil 1101]. Thus, in *Defensor-Santiago v. Guingona*, G.R. No. 134577, November 18, 1998, where Senator Defensor-Santiago questioned the election of Senator Guingona as Minority Floor Leader, the Supreme Court said that it "has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of constitutional principles that it is bound to protect and uphold --- the very duty that justifies the Court's being. Constitutional respect and a becoming regard for the sovereign acts of a co-equal branch prevent this Court from prying into the internal workings of the Senate. To repeat, this Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and the majesty of the law." See also *Bagatsing v. Committee on Privatization*, *supra*., where it was held that the decision of PNOC to privatize Petron and the approval of such by the Committee on Privatization, being in accordance with Proclamation No. 50, cannot be reviewed by the Courts, because such acts are an exercise of executive functions over which the Court will not pass judgment nor inquire

into the wisdom of. For further application of the “political question” principle, read *Sanidad v. Comelec*, 73 SCRA 333, and *Romulo v. Yniguez*, 141 SCRA 263.

vic2) But remember that the scope of the political question doctrine has been limited by the 2nd paragraph, Sec. 1, Art. VIII, particularly the portion which vests in the judiciary the power “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”.

g) Delegation of Powers

i) Rule: “*Potestas delegata non potest delegare*”, based on the ethical principle that delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.

ia) While PAGCOR is allowed under its charter to enter into operator's and/or management contracts, it is not allowed to relinquish or share its franchise, much less grant a veritable franchise to another entity such as SAGE. PAGCOR cannot delegate its power, inasmuch as there is nothing in the charter to show that it has been expressly authorized to do so. In *Lim v. Pacquing*, 240 SCRA 649, the Court clarified that “since ADC has no franchise from Congress to operate jai-alai, it cannot, even if it has a license or permit from the City Mayor, operate jai-alai in the City of Manila”. By the same token, SAGE has to obtain a separate legislative franchise, and not “ride on” PAGCOR’s franchise if it were to legally operate on-line Internet gambling [*Jaworski v. PAGCOR*, G.R. No. 144463, January 14, 2004],

ii) Permissible delegation:

iia) Tariff Powers to the President, as specifically provided in Sec. 28(2), Art. VI: “*The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as 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*”.

iia1) The Tariff and Customs Code grants such stand-by powers to the President. In *Garcia v. Executive Secretary*, 211 SCRA 219, the Supreme Court upheld the constitutionality of Executive Orders Nos. 475 and 478, which levied a special duty of P0.95 per liter on imported crude oil, and P1.00 per liter on imported oil products, as a valid exercise of delegated

legislative authority under the Tariff and Customs Code. In *Philippine Interisland Shipping Association v. Court of Appeals*, G.R. No. 100481, January 22, 1997, it was held that the fixing of rates is essentially a legislative power. When the same is delegated to the President, he may exercise it directly, e.g., issuance of the questioned Executive Order 1088, without thereby withdrawing an earlier delegation made to the Philippine Ports Authority (PPA). But when the President directly exercises the delegated authority, the PPA may not revise the rates fixed by the former.

iib) Emergency Powers to the President, as provided in Sec. 23(2), Art. VI: "*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 powers shall cease upon the next adjournment thereof.*

iib1) An example of this is R.A. 6826, approved on December 20, 1989. The President issued National Emergency Memorandum Orders (NEMOs) in the exercise of delegated legislative powers. See: *Araneta v. Dinglasan*, 84 Phil 368; *Rodriguez v. Gella*, 92 Phil 603.

iib2) A distinction has to be made between the President's authority to declare a "state of emergency" and to exercise emergency powers. To the first, since Sec. 18, Art. VII, grants the President such power, no legitimate constitutional objection can be raised. To the second, manifold constitutional issues arise. The exercise of emergency powers, such as the taking over of privately-owned public utilities or businesses affected with public interest, requires a delegation from Congress. Sec. 17, Art. XII, must be understood as an aspect of the emergency powers clause. The taking over of private businesses affected with public interest is just another facet of the emergency powers generally reposed in Congress. Thus, when Sec. 17, Art. XII, provides that "*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*", "the State" refers to Congress, not the President. Whether the President may exercise such power is dependent on whether Congress delegates it to the former pursuant to a law prescribing the reasonable terms thereof [*David v. Macapagal-Arroyo, supra*].

iic) Delegation to the People (Sec. 32, Art. VI; Sec. 10, Art. X; Sec. 2, Art. XVII; Republic Act 6735). See: *People v. Vera*, 65 Phil 56, which was decided under the 1935 Constitution, where the Supreme Court said that courts have sustained the delegation of legislative power to the people at

large. Under the 1987 Constitution, there are specific provisions where the people have reserved to themselves the function of legislation.

iic1) *Referendum vs. Plebiscite.* *Referendum* is the power of the electorate to approve or reject legislation through an election called for the purpose. It may be of two classes, namely: referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies. *Plebiscite* is the electoral process by which an initiative on the Constitution is approved or rejected by the people [Sec. 2 (c) and (e), Republic Act No. 6735].

iid) Delegation to local government units (See: R.A. 7160). "Such legislation (by local governments) is not regarded as a transfer of general legislative power, but rather as the grant of the authority to prescribe local regulations, according to immemorial practice, subject, of course, to the interposition of the superior in cases of necessity" [*People v. Vera, supra.*]. This recognizes the fact that local legislatures are more knowledgeable than the national lawmaking body on matters of purely local concern, and are in a better position to enact appropriate legislative measures thereon.

iie) Delegation to Administrative Bodies "The power of subordinate legislation." In *Conference of Maritime Manning Agencies, Inc., v. POEA*, 243 SCRA 666, POEA Governing Board Resolution No. 01-94, increasing and adjusting the rates of compensation and other benefits in the Standard Employment Contract for Seafarers, was held to be a valid exercise of delegated legislative authority, inasmuch as it conforms to the sufficient and valid standard of "fair and equitable employment practices" prescribed in E.O. 797. In *Osmena v. Orbos, supra.*, it was held that there was no undue delegation of legislative power in the authority granted by legislature to the Energy Regulatory Board to impose additional amounts to augment the resources of the Oil Price Stabilization Fund. See also: *Tablarin v. Gutierrez*, 152 SCRA 730; *Eastern Shipping v. POEA*, 166 SCRA 533. But in *Kilusang Mayo Uno Labor Center v. Garcia, supra.*, the authority given by LTFRB to provincial bus operators to set a fare range over and above the existing authorized fare was held to be illegal for being an undue delegation of power.

iiie1) In *Pelaez v. Auditor General*, 15 SCRA 569, Sec. 68 of the Revised Administrative Code (authorizing the President to create municipalities through executive orders) was declared unconstitutional for being an undue delegation of legislative power However, in *Municipality of San Narciso (Quezon) v. Mendez*, 239 SCRA 11, E.O 353 creating the Municipal

District of San Andres in 1959 was not declared unconstitutional because it was only after almost 30 years that the legality of the executive order was challenged; throughout its 30 years of existence, the municipal district had exercised the powers and authority of a duly created local government institution, and the State had, at various times, recognized its continued existence. Likewise, the Pe/aez ruling was not applied in *Municipality of Candiay, Bohol v. Court of Appeals*, 251 SCRA 530, because the municipality had been in existence for 16 years before the Pe/aez ruling was promulgated, and various governmental acts throughout the years all indicate the State's recognition and acknowledgment of the existence of the municipal corporation. In *Municipality of Jimenez, Misamis Occidental v. Borja*, 265 SCRA 182, not only was the Municipality of Sinacaban in existence for 16 years before the Pe/aez ruling, but that even the State and the Municipality of Jimenez itself had recognized Sinacaban's corporate existence (by entering into an agreement concerning common boundaries, and that Sinacaban had attained *de jure* status by virtue of the Ordinance appended to the 1987 Constitution apportioning legislative districts throughout the country which considered Sinacaban as part of the 2nd district of Misamis Occidental.

iii) Tests for valid delegation: Both of the following tests are to be complied with [*Pelaez v. Auditor General*, 15 SCRA 569; *Tatad v. Secretary of Energy, supra.*]:

iiia) Completeness Test. The law must be complete in all its essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him except to enforce it. See *U.S. v. Ang Tang Ho*, 43 Phil 1.

iiib) Sufficient standard test. A sufficient standard is intended to map out the boundaries of the delegate's authority by defining the legislative policy and indicating the circumstances under which it is to be pursued and effected. This is intended to prevent a total transference of legislative power from the legislature to the delegate. The standard is usually indicated in the law delegating legislative power. See *Ynot v. Intermediate Appellate Court, supra.*; *de la Liana v. Alba*, 112 SCRA 294; *Demetria v. Alba*, 148 SCRA 208; *Lozano v. Martinez*, 146 SCRA 323.

iiibl) On the challenge relative to the validity of the provision of R.A. 6734 which authorized the President to "merge", by administrative determination, the regions remaining after the establishment of the Autonomous Region of Muslim Mindanao, in *Chiongbian v. Orbos*, 245 SCRA 253, the Court said that the legislative standard need not be expressed, it may simply be gathered or implied; neither should it always be found in

the law challenged, because it may be found in other statutes on the same subject. In this case, the standard was found in R.A. 5435 on the power of the President to reorganize the Executive Department “to promote simplicity, economy and to enable it to pursue programs consistent with national goals for accelerated social and economic development”.

iiib2) In *Tatad v. Secretary, Department of Energy, supra.*, even as the Supreme Court found that “R.A. 8180 contained sufficient standards for the delegation of power to the President to advance the date of full deregulation (of the oil industry)”, Executive Order No. 392 constituted a misapplication of R.A. 8180, because the President rewrote the standards set forth in the law when he considered the extraneous factor of depletion of OPSF funds.

iiib3) In *Gerochi v. Department of Energy, G.R. No. 159796, July 17, 2007*, the Court held that the EPIRA, read and appreciated in its entirety, in relation to Sec. 34 thereof, is complete in all its essential terms and conditions, and that it contains sufficient standards. Provisions of the EPIRA such as, among others, “to ensure the total electrification of the country and the quality, reliability, security and affordability of the supply of electric power”, and “watershed rehabilitation and management” are sufficient standards, as they provide the limitations on the Energy Regulatory Commission’s power to formulate the Implementing Rules and Regulations.

C. *The Incorporation Clause [Sec. 2. Art. II]: “The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations”].*

1. Read along with the Preamble; Secs. 7 & 8 (independent foreign policy and nuclear-free Philippines), Art. II; and Sec. 25 (expiration of bases agreement), Art. XVIII.

2. *Renunciation of war.* The historical development of the policy condemning or outlawing war in the international scene:

a) Covenant of the League of Nations, which provided conditions for the right to go to war;

b) 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”.

c) Charter of the United Nations. Art. 2 of which prohibits the threat or use of force against the territorial integrity or political independence of a State.

3. *Doctrine of incorporation*. By virtue of this clause, our Courts have applied the rules of international law in a number of cases even if such rules had not previously been subject of statutory enactments, because these generally accepted principles of international law are automatically part of our own laws. See *Kuroda v. Jalandoni*, 42 O.G. 4282; *Kim Chan v. Valdez Tan Keh*, 75 Phil 113.

a) The phrase “generally accepted principles of international law” refers to norms of general or customary international law which are binding on all states, e.g., renunciation of war as an instrument of national policy, sovereign immunity, a person’s right to life, liberty and due process, and *pacta sunt servanda* [*Pharmaceutical and Health Care Association of the Philippines v. Duque*, G.R. No. 173034, October 9, 2007],

b) Under the 1987 Constitution, international law can become part of the sphere of domestic law either by *transformation* or by *incorporation*. The *transformation* method requires that an international law principle be transformed into domestic law through a constitutional mechanism, such as local legislation. The *incorporation* method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law [*Pharmaceutical and Health Care Association v. Duque, supra*.]

c) The doctrine of incorporation is applied whenever municipal tribunals or local courts are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both. In a situation, however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts. In *Ichong v. Hernandez*, 101 Phil 115, the reason given by the Court was that the Retail Trade National Law was passed in the exercise of the police power which cannot be bargained away through the medium of a treaty or a contract. In *Gonzales v. Hechanova*, 9 SCRA 230 and *In Re: Garcia*, 2 SCRA 984, on the basis of separation of powers and the rule-making powers of the Supreme Court, respectively. The high tribunal also noted that courts are organs of municipal law and are accordingly bound by it in all circumstances.

d) However, as applied in most countries, the doctrine of incorporation dictates that rules of international law are given equal standing with, and are

not superior to, national legislative enactments. Accordingly, the principle of *lex posterior derogat priori* takes effect. In states where the constitution is the highest law of the land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if they are in conflict with the constitution [*Secretary of Justice v. Lantion, G.R. No. 139465, January 18, 2000*, citing *Salonga & Yap, Public International Law, 1992 ed.*]. The same rule was applied in *Philip Morris, Inc. v. Court of Appeals*, where the Supreme Court said that the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere.

4. See: Chapter I, General Principles, PUBLIC INTERNATIONAL LAW, infra..

D. *Civilian Supremacy* fSec. 3. Art. II: “*Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory*”].

1. Read Sec. 18, Art. VII (Commander-in-Chief clause).
2. See *Alih v. Castro, 151 SCRA 279*.

E. *Duty of Government; people to defend the State* fSec. 4. Art. II: “*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.*” Sec. 5. Art. II: “*The maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings Of democracy.*”].

1. Read Secs. 4 & 5, Art. XVI (Armed Forces of the Philippines provisions).
2. See *People v. Lagman and Zosa, 66 Phil. 13*
3. *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 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, G.R. No. 157036, June 9, 2004*].

a) The first real firearms law is Act No. 1780, enacted by the Philippine Commission on October 12, 1907, to regulate the importation, acquisition, possession, use and transfer of firearms. Thereafter, President Marcos issued P.D. 1856, which was amended by R.A. 8294. Being a mere statutory creation, the right to bear arms cannot be considered an inalienable or absolute right [*Chavez v. Romulo, supra.*].

F. **Separation of Church and State** fSec. 6. Art. II: "The separation of Church and State shall be inviolable."

1. Reinforced by:

- a) *Sec. 5, Art. III* (Freedom of religion clause).
- b) *Sec. 2 (5), Art. IX-C* (religious sect cannot be registered as political party).
- c) *Sec. 5 (2), Art. VI* (no sectoral representative from the religious sector).
- d) *Sec. 29 (2), Art. VI* (Prohibition against appropriation for sectarian benefit)

2. Exceptions:

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a) *Sec. 28 (3), Art. VI:* (Churches, parsonages, etc., actually, directly and exclusively used for religious purposes shall be exempt from taxation).

b) *Sec. 29 (2), Art. VI:* (Prohibition against appropriation for sectarian benefit, except when priest, etc., is assigned to the armed forces, or to any penal institution or government orphanage or leprosarium).

c) *Sec. 3 (3), Art. XIV:* (Optional religious instruction for public elementary and high school students).

d) *Sec. 4 (2), Art. XIV:* (Filipino ownership requirement for educational institutions, except those established by religious groups and mission boards).

3. See discussion on FREEDOM OF RELIGION, infra.

G. **Independent foreign policy and nuclear-free Philippines** fSec. 7, Art. II: *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.* 'Sec.

8. Art. II: "The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.]

1. Refer to Sec. 2, Art. II; Sec. 25, Art. XVIII.

2. See: Opinion, Secretary of Justice, S. 1988.

3. In *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002, the Supreme Court said that these provisions, along with Sec. 2, Art. II, Sec. 21, Art. VII, and Sec. 26, Art. XVIII, betray a marked antipathy towards foreign military presence in the country, or of foreign influence in general.

H. Just and dynamic social order fSec. 9. Art. 11: "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 rising standard of living, and an improved quality of life for all.]

1. Read Preamble.

I. Promotion of Social Justice fSec. 10. Art. II: The State shall promote social justice in all phases of national development.] See *Calalangv. Williams*, 70 Phil 726; *Almeda v. Court of Appeals*, 78 SCRA 194; *Ondoy v. Ignacio*, 97 SCRA 611; *Salonga v. Farrales*, 105 SCRA 459.

J. Respect for human dignity and human rights fSec. 11. Art. II: "The State values the dignity of every human person and guarantees full respect for human rights."] Read also Secs. 17-19, Art. XIII.

K. Family and youth fSec. 12. Art. II: "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 the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government. " Sec. 13. Art. II: "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. "]¹

1. Read also Art. XV and Art. 52, Civil Code. See *Meyer v. Nebraska*, 263 U.S. 393; *Pierce v. Society of Sisters*, 266 U.S. 510; *Cabanas v. Pilapil*, 58 SCRA 94.

2. R.A. 7610, which penalizes child prostitution and other sexual abuses, was enacted in consonance with the policy of the State to “provide special protection to children from all forms of abuse”; thus, the Court grants the victim full vindication and protection granted under the law [*People v. Larin, G.R. No. 128777, October 7, 1998*].

L. Fundamental equality of men and women fSec. 14. Art. II: “*The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.*”] Read also Sec. 14, Art. XIII.

1. In *Philippine Telegraph and Telephone Co. v. National Labor Relations Commission, G.R. No. 118978, May 23, 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* occupational 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.

M. Promotion of health and ecology fSec. 15. Art. II: *The State shall protect and promote the right to health of the people and instill health consciousness among them.* Sec. 16. Art. II: *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.*] Read also Secs. 11-13, Art. XIII.

1. In *Oposa v. Factoran, 224 SCRA 792*, it was held that the petitioners, minors duly joined by their respective parents, had a valid cause of action in questioning the continued grant of Timber License Agreements (TLAs) for commercial logging purposes, because the cause focuses on a fundamental legal right: the right to a balanced and healthful ecology.

2. In *C & M Timber Corporation v. Alcala, G.R. No. 111088, June 13, 1997*, on the issue that the “total log ban” is a new policy which should be applied prospectively and not affect the rights of petitioner vested under the Timber Licensing Agreement, the Supreme Court declared that this is not a new policy but a mere reiteration of the policy of conservation and protection expressed in Sec. 16, Art. II, of the Constitution.

N. Priority to education, science, technology, etc. fSec. 17. Art. II: “*The State shall give priority to education, science and technology, arts, culture and*

sports, to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development."] Read also Sec. 2, Art. XIV.

1. In *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 244 SCRA 770, 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. [See discussion on Academic freedom, infra.] See also *Villarv. TIP*, 135 SCRA 706; *Tablarin v. Gutierrez*, 152 SCRA 730.

2. However, in *Guingona v. Carague*, 196 SCRA 221, and in *Philconsa v. Enriquez*, *supra.*, it was held that Sec. 5, Art. XIV, which provides for the highest budgetary priority to education, is merely directory; the hands of Congress cannot be so hamstrung as to deprive it of the power to respond to the imperatives of national interest and the attainment of other state policies and objectives.

3. While it is true that this 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 [*Professional Regulation Commission v. De Guzman*, G.R. No. 144681, June 21, 2004].

4. See discussion on Art. XIV, infra.

O. *Protection to labor* [Sec. 18, Art. II]: "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."] Read also Sec. 8, Art. III; Sec. 2(5), Art. IX-B; Sec. 3, Art. XIII.¹

1. In *JMM Promotion and Management v. Court of Appeals*, 260 SCRA 319, the Supreme Court said that obviously, 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

provide mechanisms for the protection of our workforce, local or overseas. As explained in *Philippine Association of Service Exporters v. Drilon*, 163 SCRA 386, in reference to the recurring problems faced by our overseas workers, "what concerns the Constitution more paramountly is that such an 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.

2. In *Bernardo v. NLRC*, G.R. No. 122917, July 12, 1999, the Supreme Court held that the Magna Carta for Disabled Persons mandates that qualified disabled persons be granted the same terms and conditions of employment as qualified able-bodied employees; thus, once they have attained the status of regular workers, they should be accorded all the benefits granted by law, notwithstanding written or verbal contracts to the contrary. This treatment is rooted not merely in charity or accommodation, but in justice for all.

P. *Self-reliant and independent economic order* [Sec. 19. Art. II: "The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos." Sec. 20. Art. II: "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."] Read also Art. XII.

1. In *Tanada v. Angara*, 272 SCRA 18, it was held that the World Trade Organization (WTO) agreement does not violate Sec. 19, Art. II, nor Secs. 10 and 12, Art. XII, because the said sections should be read and understood in relation to Secs. 1 and 13, Art. XII, which require 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". The provisions of Art. II are not intended to be self-executing principles ready for enforcement through the courts. They do not embody judicially enforceable rights, but guidelines for legislation. The reasons for denying cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and lack of judicial authority to wade into the uncharted ocean of social and economic policy-making.
2

2. In *Association of Philippine Coconut Desiccators v. Philippine Coconut Authority*, G.R. No. 110526, February 10, 1998, the Supreme Court said 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 Sec. 6 and 19, Art. XII. This is reiterated in *Pest Management*

and Pesticide Authority. In *Pharmaceutical and Health Care Association of the Philippines v. Duque*, G.R. No. 173034, October 9, 2007, the Court held that free enterprise does not call for the removal of protective regulations. It must be clearly explained and proven by competent evidence how such protective regulations would result in restraint of trade.

Q. Land Reform [Sec. 21. Art. II]: “*The State shall promote comprehensive rural development and agrarian reform.*”] Read also Secs. 4-10, Art. XIII. See *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*, *supra*.

R. Indigenous cultural communities [Sec. 22. Art. II]: “*The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.*”] Read also Secs. 5(2), Art. VI; Sec. 5, Art. XII; Sec. 17, Art. XIV. .

S. Independent people’s organizations [Sec. 23. Art. II]: “*The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.*”] Read also Secs. 15-16, Art. XIII.

T. Communication and information in nation-building [Sec. 24. Art. II]: *The State recognizes the vital role of communication and information in nation-building.*] Read also Secs. 10-11, Art. XVI; Sec. 23, Art. XVIII.

U. Autonomy of local governments [Sec. 25. Art. II]: *The State shall ensure the autonomy of local governments.*] Read also Art. X. See *Basco v. PAGCOR*, 197 SCRA 52, where the Supreme Court said that 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*.

1. In *Limbonas v. Mangelin*, 170 SCRA 786, the Court distinguished between decentralization of administration and decentralization of power. The latter is abdication by the national government of governmental powers; while the former is merely delegation of administrative powers to the local government unit in order to broaden the base of governmental powers.²

2. In *Lina v. Pano*, G.R. No. 129093, August 30, 2001, the Supreme Court said that the 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, Congress retains control of the local government units although in a significantly reduced degree now than under our previous Constitutions. The power to create

power to grant still includes the power to withhold or recall. True there are notable innovations in the Constitution, like the direct conferment on local government units of the power to tax [*Sec. 5, Art. X*], which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of local government units, which cannot defy its will or modify or violate it. *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.

3. Thus, 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, G.R. No. 125350, December 3, 2002*].

a) On the President's power of general supervision, however, the President can only interfere in the affairs and activities of a local government unit if he or she finds that the latter had acted contrary to law. The President or any of his alter egos, cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive, therefore, by the President or any of his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity, because it violates the principle of local autonomy, as well as the doctrine of separation of powers of the executive and legislative departments in governing municipal corporations [*Judge Dadole v. Commission on Audit, supra.*].

V. Equal access of opportunities for public service fSec. 26. Art. II: “*The State shall guarantee equal access of opportunities for public service, and prohibit political dynasties as may be defined by law.*”] Read also Sec. 13, Art. VII; Secs. 1-2, Art. XIII.

1. In *Pamatong v. Comelec, G.R. No. 161872, April 13, 2004*, the Supreme Court said that this provision does not bestow a right to seek the Presidency; it does not contain a judicially enforceable constitutional right and merely specifies a guideline for legislative action. The provision is not intended to compel the State to enact positive measures that would accommodate as many as possible into public office. The privilege may be subjected to limitations. One such valid limitation is the provision of the Omnibus Election Code on nuisance candidates.

W. Honest public service and full public disclosure fSec. 27. Art. II: “*The State shall maintain honesty and integrity in the public service and take positive*

and effective measures against graft and corruption. ” Sec. 28, Art. II: “*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. ”* Read also Sec. 7, Art. III; Secs 12 & 20, Art. VI; Sec. 20, Art. VII; Sec. 4, Art. IX-D; Secs. 4-15 & 17, Art. XI; and Secs. 12 &21, Art. XII. See *Legaspi v. Civil Service Commission*, 150 SCRA 530; *Valmonte v. Belmonte*, 170 SCRA 256; *Garcia v. Board of Investments*, 177 SCRA 374; *Aquino-Sarmiento v. Morato*, 203 SCRA 515.

VI. BILL OF RIGHTS

A. In general.

1. *Definition.* The set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of government as a means of securing the enjoyment of those rights. The Bill of Rights is designed to preserve the ideals of liberty, equality and security "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles" [quoted in *PBM Employees Organization v. Philippine Blooming Mills*, 51 SCRA 189]. Generally, any governmental action in violation of the Bill of Rights is void. These provisions are also generally self-executing.

a) Civil Rights. Those rights that belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights to property, marriage, equal protection of the laws, freedom of contract, etc.. They are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action.'

b) Political Rights. They refer to the right to participate, directly or indirectly, in the establishment or administration of government, e.g., the right of suffrage, the right to hold public office, the right to petition and, in general the rights appurtenant to citizenship vis-a-vis the management of government [*Simon v. Commission on Human Rights*, G.R. No. 100150, January 5, 1994].²

2. In *Republic v. Sandiganbayan*, G.R. No. 104768, July 21, 2003, the Supreme Court held that the Bill of Rights under the 1973 Constitution was not operative from the actual and effective take-over of power by the revolutionary government following the EDSA revolution until the adoption, on March 24, 1986, of the Provisional (Freedom) Constitution. During this period, the directives and orders of the revolutionary government were the supreme law, because no constitution limited the extent and scope of such directives and orders. Thus, during the interregnum, a person could not invoke any exclusionary right under the Bill of Rights, because there was neither a constitution nor a Bill of Rights at the time. However, the protection accorded to individuals under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights remained in effect during the interregnum.

B. Due Process of Law. fSec. 1. Art. III: "No person shall be deprived of life, liberty or property without due process of law x xx .]

1. *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 or imprisoned or disseized or outlawed, or in any manner destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land [per legem terrae].

2. *Definition.* "A law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial" [*Dartmouth College v. Woodward*, 4 *Wheaton* 518], "Responsiveness to the supremacy of reason, obedience to the dictates of justice" [*Ermita-Malate Hotel & Motel Operators Association v. City of Manila*, 20 *SCRA* 849]. "The embodiment of the sporting idea of fair play" [*Frankfurter, Mr. Justice Holmes and the Supreme Court*, pp 32-33].

3. *Who are protected.* Universal in application to all persons, without regard to any difference in race, color or nationality. Artificial persons are covered by the protection but only insofar as their property is concerned [*Smith Bell & Co. v. Natividad*, 40 *Phil.* 163]. The guarantee extends to aliens and includes the means of livelihood [*Villegas v. Hiu Chiong*, 86 *SCRA* 275].

4. Meaning of life, liberty and property.

a) Life includes the right of an individual to his body in its completeness, free from dismemberment, and extends to the use of God-given faculties which make life enjoyable [*Justice Malcolm, Philippine Constitutional Law*, pp. 320321]. See: *Buck v. Bell*, 274 U.S. 200.

b) Liberty includes "the right to exist and the right to be free from arbitrary personal restraint or servitude, x x x (It) includes the right of the citizen to be free to use his faculties in all lawful ways x x x" [*Rubi v. Provincial Board of Mindoro*, 39 *Phil* 660],

c) Property is anything that can come under the right of ownership and be the subject of contract. It represents more than the things a person owns; it includes the right to secure, use and dispose of them [*Torraco v. Thompson*, 263 U.S. 197].ⁱ⁾

i) Public office is not property; but one unlawfully ousted from it may institute an action to recover the same, flowing from the *de jure* officer's right to office [*Nunez v. Averia*, 57 *SCRA* 726]. Indeed, the Court

while public office is not property to which one may acquire a vested right, it is nevertheless a protected right [*Bince v. Commission on Elections*, 218 SCRA 782]. One's employment, profession or trade or calling is a property right, and the wrongful interference therewith is an actionable wrong. Thus, an order of suspension, without opportunity for hearing, violates property rights [*Crespo v. Provincial Board*, 160 SCRA 66]. But its proper regulation has been upheld as a legitimate subject of the police power of the State, particularly when its conduct affects either the execution of legitimate governmental functions, the preservation of the State, the public health and welfare, and public morals [*JMM Promotion and Management v. Court of Appeals, supra.*].

ii) A mining license that contravenes a mandatory provision of law under which it is granted is void. Being a mere privilege, a license does not vest absolute rights in the holder. Thus, without offending the due process and the non-impairment clauses of the Constitution, it can be revoked by the State in the public interest [*Republic v. Rosemoor Mining & Development Corporation*, G.R. No. 149927, March 30, 2004]. Mere privileges, such as the license to operate a cockpit, are not property rights and are revocable at will [*Pedro v. Provincial Board of Rizal*, 53 Phil 123].

iii) The license to carry a firearm is neither a property nor a property right. Neither does it create a vested right. A permit to carry a firearm outside one's residence may be revoked at any time. Even if it were a property right, it cannot be considered as absolute as to be placed beyond the reach of police power [*Chavez v. Romulo*, 431 SCRA 534],

iv) The mandatory suspension from office of a public official pending criminal prosecution for violation of RA 3019 cannot amount to deprivation of property without due process of law [*Libanan v. Sandiganbayan*, 233 SCRA 163].

5. Aspects of due process:

a) Substantive. This serves as a restriction on government's law- and rule-making powers. The requisites are:

i) The interests of the public, in general, as distinguished from those of a particular class, require the intervention of the State. [See discussion on Police Power, Chapter IV.]

ii) The means employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals. In *Kwong Sing v. City of Manila*, 41 Phil 103, an ordinance requiring all laundry

establishments to issue their receipts in English and Spanish was held valid. In *Yu Eng Cong v. Trinidad*, 271 U.S. 500, the Court declared as unconstitutional a law prohibiting traders from keeping their books of accounts in a language other than English, Spanish or any local dialect. See also *Layno v. Sandiganbayan*, 136 SCRA 536; *Deloso v. Sandiganbayan*, 173 SCRA 409.

iia) In *GS/S v. Montesclaros*, 434 SCRA 41, the Supreme Court declared as invalid Sec. 18, PD 1146, which provides that the surviving spouse has no right to survivorship pension benefits if the surviving spouse contracted marriage with the pensioner within three years before the pensioner qualified for the pension benefit. In a pension plan where employee participation is mandatory, employees have vested rights in the pension. Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits protected by the due process clause. Sec. 18, PD 1146 is seriously oppressive in outrightly denying the claim of a dependent spouse for survivorship pension benefits if the dependent spouse contracted marriage within the three-year prohibited period.

b) Procedural. This serves as a restriction on actions of judicial and quasi-judicial agencies of government. Requisites:

i) An impartial court or tribunal clothed with judicial power to hear and determine the matter before it.

ia) In *Javier v. Comelec*, 144 SCRA 194, there was denial of due process when Commissioner Opinion, who was formerly a law partner of respondent Pacificador, obstinately insisted in participating in the case, thus denying the petitioner "the cold neutrality of an impartial judge". In *Galman v. Sandiganbayan*, 144 SCRA 43, the Court held that the People was denied due process which requires an impartial tribunal and an unbiased prosecution.

ib) In *Tabuena v. Sandiganbayan*, 268 SCRA 332, reiterated in *Imelda Romualdez Marcos v. Sandiganbayan*, G.R. No. 126995, October 6, 1998, the Supreme Court held that when the Court cross-examined the accused and witnesses, it acted with over-zealousness, assuming the role of both magistrate and advocate, and thus denied the accused due process of law. In *Rivera v. Civil Service Commission*, 240 SCRA 43, and in *Singson v. National Labor Relations Commission*, 274 SCRA 358, the Supreme Court reiterated the rule that a public officer who decided the case should not be the same person to decide it on appeal because he cannot be an impartial judge. In *GSIS v. Court of Appeals*, G.R. No. 128523, September 26, 1998, the police chief inspector who had earlier recommended that the application for death

benefits be approved, was held to be biased and should have inhibited himself from the proceedings.

ib1) But in *People v. Herida*, G.R. No. 127158, March 5, 2001, reiterated in *People v. Medenilla*, G.R. Nos. 131638-39, March 26, 2001, even as the transcript of stenographic notes showed that the trial court intensively questioned the witnesses (approximately 43% of the questions asked of prosecution witnesses and the accused were propounded by the judge), the Supreme Court held that the questioning was necessary. Judges have as much interest as counsel in the orderly and expeditious presentation of evidence, and have the duty to ask questions that would elicit the facts on the issues involved, clarify ambiguous remarks by witnesses, and address the points overlooked by counsel. Likewise, in *People v. Adora*, 275 SCRA 441, it was held that the judge should be given reasonable leeway in directing questions to witnesses in order to elicit relevant facts; it is expedient to allow the judge to question a witness so that his judgment may rest upon a full and clear understanding of the facts. Thus, in *People v. Castillo*, 289 SCRA 213, reiterated in *Cosep v. People*, 290 SCRA 378, and in *People v. Galleno*, 291 SCRA 761, the Supreme Court said that questions which merely clear up dubious points and elicit relevant evidence are within the prerogative of the judge to ask.

ib2) In *People v. Larranaga*, 421 SCRA 530, the Supreme Court said that the test is whether the intervention of the judge tends to prevent the proper presentation of the case or the ascertainment of the truth in the matter where he interposes his questions or comments. When the judge remarked that the testimonies of two witnesses were incredible, that another witness was totally confused and appeared to be mentally imbalanced, and that two witnesses were liars, his comments were just honest observations intended to warn the witnesses to be candid to the court. He merely wanted to ascertain the veracity of their contradictory statements.

ic) In *Cruz v. Civil Service Commission*, G.R. No. 144464, November 22, 2001, the Court rejected petitioners' contention that they were denied due process ostensibly because the Civil Service Commission acted as investigator, complainant, prosecutor and judge. The CSC is mandated to hear and decide administrative cases instituted by it or instituted before it directly or on appeal. Neither can it be denied that petitioners were formally charged after a *prima facie* case for dishonesty was found to exist. They were properly informed of the charges. They submitted an answer and were given the opportunity to defend themselves.

id) In *Tejano v. Ombudsman*, G.R. No. 159190, June 30, 2005, the petitioner attributed partiality to Ombudsman Deserto for having participated in the reinvestigation of the instant case despite his having earlier

participated in the initial preliminary investigation of the same when he was Special Prosecutor. The Supreme Court agreed with the petitioner, saying that it is a steadfast rule that the officer who reviews a case on appeal should not be the same person whose decision is under review.

ie) Read also Rule 137, Rules of Court, on disqualification of judges.

ii) Jurisdiction must be lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding.

iia) It should be emphasized that the service of summons is not only required to give the court jurisdiction over the person of the defendant but also to afford the latter the opportunity to be heard on the claim made against him. Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction [*Sarmiento v. Raon*, G.R. No. 131482, July 3, 2002].

iib) While jurisdiction over the person of the defendant can be acquired by the service of summons, it can also be acquired by voluntary appearance before the court, which includes submission of pleadings in compliance with the order of the court or tribunal./*De los Santos v. NLRC*, G.R. No. 121327, December 20, 2001],

ill) The defendant must be given an opportunity to be heard. Due process is satisfied as long as the party is accorded the opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee [*Bautista v. Court of Appeals*, G.R. No. 157219 May 28, 2004].

iiia) In *Ynot v. Intermediate Appellate Court*, *supra*., Executive Order 626-A was declared violative of due process because the owner of the carabaos confiscated is denied the right to be heard in his defense and immediately condemned and punished. In *Eastern Broadcasting v. Dans*, 137 SCRA 628, the closure of radio station DYRE where the order was issued summarily, without a hearing, was deemed violative of due process. In *Tatad v. Sandiganbayan*, 159 SCRA 70, it was held that the unreasonable delay in the termination of the preliminary investigation by the Tanodbayan violated the guarantee of due process. In *Gonzales v. Civil Service Commission*, 226 SCRA 66, there was deemed a denial of due process where the notice to petitioner to report back to work within five days otherwise he would be dropped from the rolls, was sent to petitioner's Quezon City address when the office knew where

petitioner was temporarily residing in San Jose, California. In *Lim v. Court of Appeals*, G.R. No. 111397, August 12, 2002, Supreme Court said that the closure of Bistro violated the due process clause. Instead of arbitrarily closing down the establishment's business operations, Mayor Lim should have given Bistro an opportunity to rebut the allegations that it violated the conditions of its license.

iiib) *Unicraft Industries v. Court of Appeals*, G.R. No. 134309, March 26, 2001, states that, even as it is conceded that decisions of Voluntary Arbitrators are generally accorded finality, where (as in this case) the petitioner was not given the chance to present evidence, there is a violation of the due process clause, and the Arbitrator's decision is null and void.

iiic) Knowledge of insufficiency of funds in or credit with the bank is presumed from the act of making, drawing, and issuing a check payment which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. But this presumption does not hold when the maker or drawer pays or makes arrangements for the payment of the check within 5 banking days after receiving notice that such check had been dishonoured. Thus, it is essential for the maker or the drawer to be notified of the dishonor of the check, so that he can pay the value thereof, or make arrangements for its payment within the period prescribed by law. Absent such notice of dishonor, the maker or the drawer cannot be convicted of violating B.P. 22, as there would be a violation of procedural due process [*Caras v. Court of Appeals*, G.R. No. 129900, October 2, 2001],

iiid) Not all cases require a trial-type hearing. Due process in labor cases before a Labor Arbiter is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would support their respective claims [*Mariveles Shipyard v. Court of Appeals*, G.R. No. 144134, November 11, 2003; *Zacarias v. National Police Commission*, G.R. No. 119847, October 24, 2003]. Thus, there is no denial of due process where the DOLE regional director decided a case on the basis only of position papers submitted by the parties [*Valladolid v. Inciong*, 121 SCRA 205]. Indeed, the NLRC and the Labor Arbiter are authorized to decide a case on the basis of position papers and documents submitted; the holding of an adversarial trial depends on the discretion of the Labor Arbiter and the parties cannot demand it as a matter of right [*Fernandez v. NLRC*, G.R. No. 105892, January 28, 1998; *Vinta Maritime v. NLRC*, G.R. No. 113911, January 23, 1998].

iiie) Likewise, in *Torres v. Gonzales*, 152 SCRA 272, the Supreme Court said that Sec. 64 of the Revised Administrative Code is not

repugnant to the due process clause, and the accused is not constitutionally entitled to another judicial determination of whether he breached the condition of his pardon. In *Zaldivar v. Sandiganbayan*, 166 SCRA 316, the Supreme Court declared that "to be heard" does not only mean verbal arguments in court. One may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

iiif) Neither is the respondent entitled to notice and hearing during the evaluation stage of the extradition process. PD 1069 affords an extraditee sufficient opportunity to meet the evidence against him once the petition is filed in court. The time for the extraditee to know the basis of the request for extradition is merely moved to the filing in court of the formal petition for extradition. The extraditee's right to know is momentarily withheld during the evaluation stage to accommodate the more compelling interest of the state to prevent escape of potential extraditees which can be precipitated by premature information on the basis of the request for extradition. No less compelling at that stage of the extradition proceedings is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive, which has been endowed by our Constitution with greater powers over matters involving our foreign relations [*Secretary of Justice v. Judge Lantion*, G.R. No. 139465, October 17, 2000; *Cuevas v. Munoz*, G.R. No. 140520, December 18, 2000].

iiig) This was clarified in *Government of the United States of America v. Judge Puruganan*, G.R. No. 148571, September 24, 2002, where the Supreme Court said that upon receipt of a petition for extradition and its supporting documents, the judge must study them and make, as soon as possible, a *prima facie* finding whether they are sufficient in form and substance, whether they comply with the Extradition Treaty, and whether the person sought is extraditable. If no *prima facie* finding is possible, the petition may be dismissed at the discretion of the judge. On the other hand, if there is a *prima facie* finding, the judge must immediately issue a warrant for the arrest of the extraditee, who is at the same time summoned to answer the petition and to appear at the scheduled summary hearings. Prior to the issuance of the warrant, the judge must not inform or notify the potential extraditee of the pendency of the petition, lest the latter be given the opportunity to escape and frustrate the proceedings. Thus, also, the grant by the judge of bail was deemed null and void, as persons to be extradited are presumed to be flight risks. Accordingly, in the Resolution on the Motion for Reconsideration [December 17, 2002], the Supreme Court denied with finality Mark Jimenez' motion, saying that extradition is *sui generis*, and does not fall within the ambit of the right to bail.

iiig) The ruling in *Puruganan* was modified in *Government of HongKong v. Hon. Felixberto Olalia, jr.*, G.R. No. 153675, April 19, 2007, where the Supreme Court said that it cannot ignore the modern trend in public international law which places primacy on the worth of the individual person and the sanctity of human rights. While the Universal Declaration of Human Rights is not a treaty, the principles contained therein are now recognized as customarily binding upon the members of the international community. In *Mejoff v. Director of Prisons*, this Court, in granting bail to a prospective deportee, held that under the Constitution, the principles set forth in the Declaration are part of the law of the land. If bail can be granted in deportation cases, considering that the Universal Declaration of Human Rights applies to deportation cases, there is no reason why it cannot be invoked in extradition cases. After all, both are administrative proceedings where the innocence or guilt of the person detained is not in issue.

iiig2) Citing Chief Justice Puno's Separate Opinion in *Puruganan*, the Court, in *Government of HongKong*, adopted a new standard to be used in granting bail in extradition cases, denominated "clear and convincing evidence". As Chief Justice Puno explained, this standard should be lower than proof beyond reasonable doubt, but higher than preponderance of evidence. The potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court for entitlement to bail.

iiih) In *Roxas v. Vasquez*, G.R. No. 114944, June 21, 2001, it was held that the lack of notice to, or participation of, petitioners (who had already been cleared by the Ombudsman in its original resolution) at the reinvestigation does not render the subsequent resolution (on reinvestigation) null and void, even if the said subsequent resolution reinstated the complaint against them. But in the *Resolution, dated May 29, 2002*, on the *Motion for Reconsideration* in the said case, the Supreme Court said that the petitioners were denied due process when the Special Investigator reinstated the complaint against the petitioners without their knowledge. At the very least, they should have been notified that the complaint against them had not yet been finally disposed of. They should have been apprised of their possible implication in the criminal case, to enable them to meet any new accusation against them head-on and to prepare for their defense.

iv) The right of a party to cross-examine the witness against him in a civil case is an indispensable part of due process [*Ortigas v. Lufthansa*, 64 SCRA 610]. But in administrative proceedings, technical rules of procedure and evidence are not strictly applied. Since nothing on record shows that petitioner asked for cross-examination, he cannot argue that he has been

deprived of due process merely because no cross-examination took place [*Emin v. De Leon, G.R. No. 139794, February 27, 2002*]. Likewise, it was held that where the petitioners were amply afforded the opportunity to register objections to respondent's offer of evidence, there was no denial of due process [*Rodson Phil., Inc. v. Court of Appeals, G.R. No. 141857, June 9, 2004*].

iiij) The filing of a motion for reconsideration cures the defect of absence of a hearing [*Chua v. Court of Appeals, 287 SCRA 33; reiterated in Marohombsar v. Judge Adiong, A.M. No. RTJ-02-1674, January 22, 2004*]. The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of [*Emin v. De Leon, supra*]. In *Quintos v. Comelec, G.R. No. 149800, November 21, 2002*, it was held that petitioner was not denied due process because he subsequently filed a motion for reconsideration which the Comelec considered and acted upon, albeit unfavorably.

iiik) In *Villaruel v. Fernando, G.R. No. 136726, September 24, 2003*, it was held that there was no denial of due process where the appellate court dismissed petitioner's appeal for failure of the Office of the Solicitor General to file the required memorandum. As a rule, the negligence of counsel binds the client. Moreover, petitioner in this case is not entirely blameless for the dismissal of his appeal. After the OSG's failure to file the answer to the petition for mandamus and damages, and to have the order declaring the petitioner in default lifted, petitioner should have already replaced the OSG with another lawyer. The same principle was reiterated in *Borromeo Bros. Estate v. Garcia, G.R. no. 139594-95, February 26, 2008*.

iiil) There are cases in which notice and hearing may be dispensed with without violating due process. Among these are the cancellation of the passport of a person sought for the commission of a crime [*Suntay v. People, 101 Phil 833*], the preventive suspension of a civil servant facing administrative charges [*Co v. Barbers, 290 SCRA 717*], the distraint of property for tax delinquency; the padlocking of restaurants found unsanitary or of theaters showing obscene movies, and the abatement of nuisances *per se*. And in *Equitable Banking Corporation v. Calderon, G.R. No. 156168, December 14, 2004*, the Supreme Court ruled that no malice or bad faith attended the Bank's dishonor of Calderon's credit card, inasmuch as the dishonor was justified under its Credit Card Agreement which provided that the cardholder agreed not to exceed his approved credit limit, otherwise the card privilege would be automatically suspended without notice to the cardholder.

iiim) A person who is not impleaded in a complaint cannot be bound by the decision rendered therein, for no man shall be affected by a

proceeding in which he is a stranger. In this case, the respondent is adversely affected by such judgment, as he was the subsequent purchaser of the subject property, and title was already transferred to him. It will be the height of inequity to allow respondent's title to be nullified without the respondent being given the opportunity to present any evidence in support of his ostensible ownership of the property. It is tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law [*National Housing Authority v. Evangelista*, G.R. No. 140945, May 16, 2005].

iv) Judgment must be rendered upon lawful hearing. This is necessary, because otherwise, the right to a hearing would be rendered meaningless. Relate this to Sec. 14, Art. VIII, which provides 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.

iva) Due process demands that the parties to a litigation be informed how the case was decided with an explanation of the factual and legal reasons that led to the conclusions of the court [*Insular Life Assurance Co. v. Young*, G.R. No. 140964, January 16, 2002].

ivb) In *Lorbes v. Court of Appeals*, G.R. No. 139884, February 15, 2001, it was held that courts should be liberal in setting aside orders of default, because judgments of default are frowned upon unless in cases where it clearly appears that the reopening of the case is intended for delay. Where the order of default is immoderate, there is a violation of due process.

6. *Publication as part of due process.* In *Tanada v. Tuvera*, 146 SCRA 446, the Court held that publication is imperative to the validity of laws, presidential decrees and executive orders, administrative rules and regulations, and is an indispensable part of due process. Thus, in *Republic (National Telecommunications Commission) v. Express Telecommunications*, G.R. No. 147096, January 15, 2002, the National Telecommunications Commission, in granting Bayantel the provisional authority to operate, applied the 1978 Rules of Practice and Procedure, and not the 1993 Revised Rules, because the latter had not yet been published (although the same had already been filed with the National Administrative Register).⁷

7. *Appeal and due process.* Appeal is not a natural right nor is it part of due process [*Tropical Homes, Inc. v. NHA*, 152 SCRA 540]; generally, it may be allowed or denied by the legislature in its discretion. But where the Constitution gives a person the right to appeal, e.g., in the cases coming under the minimum appellate jurisdiction of the Supreme Court [Sec. 5(2), Art. VIII], denial of the right to appeal constitutes a

there is a statutory grant of the right to appeal, denial of that remedy also constitutes a denial of due process.

a) In *Alba v. Nitorreda*, 254 SCRA 753, the Supreme Court reiterated that the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. Accordingly, the constitutional requirement of due process may be satisfied notwithstanding the denial of the right to appeal, because the essence of due process is simply the opportunity to be heard and to present evidence in support of one's case. See also *Producers Bank v. Court of Appeals*, G.R. No. 126620, April 17, 2002. In *Barata v. Abalos*, G.R. No. 142888, June 6, 2001, it was held that the failure to provide the complainant the right to appeal in certain cases (e.g., from the decision of the Ombudsman) is not a denial of due process. It may be noted that in appropriate cases involving oppressive or arbitrary action, the complainant is not deprived of a legal recourse by certiorari under Rule 65 of the Rules of Court, which applies suppletorily to the Rules of Procedure of the Ombudsman.

b) In *Sajot v. Court of Appeals*, G.R. No. 109721, March 11, 1999, it was held that there was no denial of due process where the court denied the appeal due to the negligence of the accused and of his counsel. An appellant must strictly comply with the rules inasmuch as appeal is purely a statutory right.

8. *Preliminary investigation and due process.* It is doctrinally settled that the right to preliminary investigation is not a constitutional right, but is merely a right conferred by statute [*Serapio v. Sandiganbayan*, G.R. No. 148468, January 28, 2003]. The absence of a preliminary investigation does not impair the validity of the information or otherwise render the same defective. The denial of the motion for reinvestigation cannot likewise invalidate the information or oust the court of its jurisdiction over the case [*Budiongan v. De la Cruz*, G.R. No. 170288, September 22, 2006]. The right may be waived expressly or by failure to invoke it [*Benedicto v. Court of Appeals*, G.R. No. 125359, September 4, 2001]. It may be forfeited by inaction, and cannot be invoked for the first time on appeal [*People v. Lagao*, G.R. No. 118457, April 8, 1997].

a) But where there is a statutory grant of the right to preliminary investigation, denial of the same is an infringement of the due process clause [*Go v. Court of Appeals*, 206 SCRA 138]. In such cases, the right to preliminary investigation is substantive, not merely formal or technical. To deny it to the petitioner would deprive him of the full measure of his right to due process [*Yusop v. Sandiganbayan*, G.R. No. 138859-60, February 22, 2001].

i) A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from the trouble, expenses and anxiety of a public trial. It is also intended to protect the State from having to conduct useless and expensive trials. Thus, while the right is statutory rather than constitutional, it is a component of due process in administering criminal justice [*Victor Jose Tan Uyy. Office of the Ombudsman, G.R. Nos. 156399-400, July 27, 2008*].

b) It is now provided in Sec. 1, Rule 112, Rules on Criminal Procedure, that a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day, without regard to the fine.

i) However, when a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer. Before the • complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Art. 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within 15 days from its inception. After the filing of the complaint or information in court without a preliminary investigation, the accused may, within 5 days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule [Sec. 7, Rule 112, Rules on Criminal Procedure].

ii) Be that as it may, the lack of preliminary investigation is not a ground for a motion to quash. The case must be suspended with respect to the petitioner even if the case is already undergoing trial [*Yusop v. Sandiganbayan, supra*]. The right is not waived by the filing of motion to be admitted to bail. But the right is waived when the accused fails to invoke it before or at the time of entering a plea at arraignment [*People v. Velasquez, G.R. No. 132635, February 21, 2001; Benedicto v. Court of Appeals, supra*],

iii) The preliminary investigation conducted by the DOJ is merely inquisitorial; it is not a trial on the merits, and its sole purpose is to determine whether a crime has been committed and whether the respondent therein is probably guilty of the crime. It is not the occasion for the full and exhaustive display of the parties' evidence, and upon satisfaction of the investigating

prosecutor that probable cause exists based on the evidence presented, he may terminate the preliminary investigation and resolve the case [*Judy Ann Santos v. People, G.R. No. 173176, August 26, 2008*].

c) A preliminary investigation is essentially an inquiry to determine whether (1) a crime has been committed, and (2) whether there is probable cause that the accused is guilty thereof. The public prosecutor determines during the preliminary investigation whether probable cause exists; thus the decision whether or not to dismiss the criminal complaint depends on the sound discretion of the prosecutor. Courts will not interfere with the conduct of preliminary investigation or reinvestigation or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against the offender [*Baviera v. Paglinawan, G.R. No. 168580, February 8, 2007*]. In *Sanrio Company v. Lim, G.R. No. 168380, February 8, 2008*, the Supreme Court reiterated the policy of non-interference with executive discretion in the determination of probable cause. It held that a public prosecutor is afforded a wide latitude of discretion in the conduct of preliminary investigation.

i) The possible exception to this rule of non-interference, as held in *Aguirre v. Secretary of Justice, G.R. No. 170723, March 3, 2008*, is where there is an unmistakable showing of grave abuse of discretion amounting to excess of jurisdiction on the part of the public prosecutor. Such grave abuse of discretion will then justify judicial intrusion into the precincts of the executive.

d) Consistent with the rights of all persons to due process of law and to speedy trial, the Constitution commands the Office of the Ombudsman to act promptly on complaints filed against public officials. Thus, the failure of said office to resolve a complaint that has been pending for six years clearly violates this mandate and the public official's rights. In such event, the aggrieved party is entitled to the dismissal of the complaint [*Roque v. Ombudsman, G.R. No. 129978, May 12, 1999*]. This reiterates *Tatad v. Sandiganbayan, 159 SCRA 70*, where the Court said that unreasonable delay in the termination of the preliminary investigation by the Tanodbayan violated the due process clause. But where the delay is due to the complexity of the issues involved [*Defensor-Santiago v. Garchitorena, 228 SCRA 214*], or is caused by the petitioner's own acts, not by the inaction of the prosecution [*Socrates v. Sandiganbayan, 253 SCRA 559*], there is no violation.ⁱ⁾

i) The Court does not interfere with the Ombudsman's discretion in the conduct of preliminary investigation. The Ombudsman's findings are essentially factual in nature, and the Supreme Court is not a trier of facts [*Serapio v. Sandiganbayan, supra*].

9. *Administrative due process.* In *Ang Tibay v. CIR*, 69 Phil 635, the Court enumerated the requisites of administrative due process, as follows: (a) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof; (b) The tribunal must consider the evidence presented; (c) The decision must have something to support itself; (d) The evidence must be substantial; (e) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties; (f) The tribunal or any of its judges must act on its or his own independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and (g) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding will know the various issues involved, and the reasons for the decision.

a) Due process in quasi-judicial proceedings before the Comelec requires notice and hearing. The proclamation of a winning candidate cannot be annulled if he has not been notified of any motion to set aside his proclamation. In *Namil v. Comelec*, G.R. No. 150540, October 28, 2003, the Comelec issued the questioned order annulling the proclamation on the basis of private respondent's allegations and the recommendation of the law department, without giving notice to the candidate proclaimed. Thus, the Comelec order was declared void.

C. *Equal Protection of the laws.* fSec. 1. Art. III: "x x x nor shall any person be denied the equal protection of the laws".]

1. *Meaning; persons protected.* All persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Natural and juridical persons are entitled to this guarantee; but with respect to artificial persons, they enjoy the protection only insofar as their property is concerned.

2. *Scope of Equality.*

a) Economic. See constitutional provisions on: (i) Free access to courts [Sec. 11, Art. III]; (ii) Marine wealth reserved for Filipino citizens; and Congress may reserve certain areas of investments [Sec. 2, par. 2, and Sec. 10, Art. XII]; (iii) Reduction of social, economic and political inequities [Secs. 1, 2 and 3, Art. XIII]. See *Ichong v. Hernandez*, *supra*, *Villegas v. Hiu Chiong*, 86 SCRA 275; *Dumlao v. Comelec*, 95 SCRA 392.ⁱ⁾

i) In *Tan v. Del Rosario*, 237 SCRA 324, the Supreme Court upheld the constitutionality of RA 7496 limiting the allowable deductions from

gross income of single proprietorships and professionals. It was held that uniformity of taxation does not prohibit classification, provided the requirements of valid classification are complied with.

b) Political. See constitutional provisions on: free access to courts [Sec. 11, Art. III]; *bona fide* candidates being free from harassment or discrimination [Sec. 10, Art. IX-C]; reduction of social, economic and political inequities [Sec. 1, Art. XIII].

i) The Constitution, as a general rule, places the civil rights of aliens on an equal footing with those of citizens; but their political rights do not enjoy the same protection [*Forbes v. Chuoco Tiaco*, 16 Phil 534]. In *Peralta v. Comelec*, 82 SCRA 30, the Court upheld the adoption of block voting, saying that if a candidate wishes to avail of the advantage of block voting he was free to join a party. In *Ceniza v. Comelec*, 95 SCRA 763, the law excluding residents of Mandaue City from voting for provincial officials was justified as a "matter of legislative discretion", and that equal protection would be violated only if groups within the city were allowed to vote while others were not. In *Unido v. Comelec*, 104 SCRA 17, the Court denied the request of the opposition for equal time and media coverage for its Plaza Miranda rally (as that given to President Marcos), because "the head of state of every country in the world must, from the very nature of his position, be accorded certain privileges not equally available to those who are opposed to him".

ii) In the criminal process, Sec. 11, Art. III, insures free access to the courts. In *Gumabon v. Director of Prisons*, 37 SCRA 420, petitioners who had been sentenced to life imprisonment for the complex crime of rebellion with murder were ordered released after 12 years of incarceration when, in *People v. Hernandez*, 99 Phil 515, the Supreme Court ruled that there is no complex crime of rebellion with murder, inasmuch as common crimes are deemed absorbed in the crime of rebellion. In *Nunez v. Sandiganbayan*, 111 SCRA 433, the constitutional mandate for the creation of a special court to hear offenses committed by public officers was the authority to make a distinction between prosecution for dishonesty in public service and prosecution for crimes not connected with public office.

c) Social. See Sec. 1, Art. XIII.

3. *Valid Classification*. Persons or things ostensibly similarly situated may, nonetheless, be treated differently if there is a basis for valid classification. The requisites are:

a) Substantial distinctions which make for real differences.

i) In *Mirasol v. DPWH*, G.R. No. 158793, June 8, 2006, where the petitioners assailed the validity of DPWH Administrative Order No. 1, which prohibited motorcycles on limited access highways on the basis of RA 2000 (Limited Access Highway Act), the Supreme Court held that there is a real and substantial distinction between a motorcycle and other motor vehicles. Not all motorized vehicles are created equal — real and substantial differences exist between a motorcycle and other forms of transport sufficient to justify its classification among those prohibited from plying the toll ways.

ii) In *Philippine Association of Service Exporters v. Drilon*, 163 SCRA 386, it was held that Filipino female domestics working abroad were in a class by themselves, because of the special risks to which their class was exposed. In *Conference of Maritime Manning Agencies v. POEA*, 243 SCRA 666, there was found substantial distinctions between land-based and sea-based Filipino overseas workers, because of dissimilarities in work environment, safety, danger to life and limb, and accessibility to social, civil and spiritual activities. In *JMM Promotion and Management v. Court of Appeals*, *supra*., the Court upheld the classification on the ground that the DOLE Order applies to all performing artists and entertainers destined for jobs abroad, as they are prone to exploitation and abuse being beyond the physical reach of government regulatory agencies. In *Dumlao v. Comelec*, *supra*., the Court upheld the validity of the law disqualifying from running for the same elective office from which he retired, any retired elective provincial or municipal official who has received payment of retirement benefits and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected. In its Resolution (on the Motion for Reconsideration), October 30, 1995, in *Tolentino v. Secretary of Finance*, *supra*., the Court rejected the contention that the exemption from VAT of electric cooperatives and sales of realty to the “homeless poor” violated the equal protection clause. The classification between electric and other cooperatives rests on a Congressional determination that there is greater need to provide cheaper electric power to as many people as possible, especially in the rural areas; and there is a difference between the “homeless poor” and the “homeless less poor”, because the latter class can afford to rent houses in the meantime that they cannot yet buy their own homes, while the former cannot. In *Ichong v. Hernandez*, *supra*., the Court upheld the validity of the Retail Trade Nationalization Law despite the objection that it violated the equal protection clause, because there exist real and actual, positive ,and fundamental differences between an alien and a national.

iii) The preventive suspension of a policeman lasting until termination of the criminal case against him, as provided in Sec. 47, RA 6975 (DILG Act of 1990), does not violate the policeman’s right to equal protection

of the laws. There is substantial distinction between policemen and other government employees; policemen carry weapons and the badge of the law, which can be used to harass or intimidate witnesses against them. Besides, Sec. 42 of P.D. 807 (Civil Service Law), which was raised as argument for equal treatment, refers to preventive suspension in administrative cases, not in criminal cases [*Himagan v. People*, 237 SCRA 538]. In *Almonte v. Vasquez*, 244 SCRA 286, it was held that the fact that the Ombudsman may start an investigation on the basis of an anonymous letter does not violate the equal protection clause. Firstly, there can be no objection to this procedure because it is provided in the Constitution itself; secondly, in permitting the filing of complaints "in any form and in any manner", the framers of the Constitution took into account the well-known reticence of people which keep them from complaining against official wrongdoing; finally, the Office of the Ombudsman is different from other investigatory and prosecutorial agencies of government because those subject to its jurisdiction are public officials who, through official pressure and influence, can quash, delay or dismiss investigations held against them. In *Telecommunications and Broadcast Attorneys of the Philippines v. Comelec*, 289 SCRA 337, the Supreme Court found substantial distinction between the print and the broadcast media which would justify different treatment under B.P. 881, viz: the physical limitations of the broadcast spectrum, the pervasive presence of the broadcast media in the lives of Filipinos, and the earlier ruling that the freedom of television and radio broadcasting is somewhat lesser than the freedom accorded to the print media. In *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, it was held that the petitioner's and intervenors' right to equal protection of the law was not violated by the enactment of R.A. 8249 because the law was not directed only to the Kuratong Baleleng cases. Every classification made by law is presumed reasonable, and the party who challenges the law must present proof of arbitrariness.

iv) On the other hand, in *People v. Jalosjos*, G.R. Nos. 13287576, February 3, 2000, the Supreme Court ruled that election to the position of Congressman is not a reasonable basis for valid classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class. Likewise, in *International School Alliance of Educators v. Quisumbing*, G.R. No. 128845, June 1, 2000, it was held that there was no reasonable distinction between the services rendered by "foreign hires" and "local hires" as to justify the disparity in salaries paid to these teachers. In *GSIS v. Montesclaros*, 434 SCRA 441, in declaring as invalid Sec. 18 of PD 1146 — which provides that a surviving spouse has no right to survivorship pension

benefits if the surviving spouse contracted marriage with the pensioner within three years before the pensioner qualified for the pension — the Supreme Court said that the classification does not rest on substantial distinctions. If the purpose of the proviso is to prevent deathbed marriages, there is no reason why the proviso reckons the 3-year prohibition from the date the pensioner qualified for the pension and not from the date the pensioner died. It lumps all marriages contracted within three years before the pensioner qualified for pension as having been contracted primarily for financial convenience. In *Re: Request of Assistant Court Administrators*, 40 SCRA 16, the Supreme Court held that there is no reasonable basis for the exclusion of the Assistant Court Administrator, the Assistant Clerks of Court and Division Clerks of Court of the Court of Appeals and the Division Clerks of the Court of the Sandiganbayan from the grant of special allowances provided in R.A. 9227.

b) Germane to the purpose of the law. The distinctions which are the bases for the classification should have a reasonable relation to the purpose of the law.

c) Not limited to existing conditions only.

i) In *People v. Cayat*, 68 Phil 12, the Supreme Court upheld the validity of the law prohibiting members of non-Christian tribes from drinking foreign liquor, on the ground that their low degree of culture and unfamiliarity with the drink rendered them more susceptible to its effects. In *Ormoc Sugar Co. v. Treasurer of Ormoc City*, 22 SCRA 603, the ordinance was declared invalid because it taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company, and none other, such that if a new sugar central is established in Ormoc, it would not be subject to the ordinance.

d) Must apply equally to all members of the same class.

i) In *Philippine Judges Association v. Prado*, 227 SCRA 703, Sec. 35, R.A. 7354, which withdrew franking privileges formerly granted to the judiciary but remained with the executive and legislative departments, was declared unconstitutional, because the three branches of government are similarly situated. In *Villegas v. Hui Chiong, supra.*, the ordinance imposing a work permit fee of P50.00 upon all aliens desirous of obtaining employment in the City of Manila was declared unconstitutional, because the fee imposed was unreasonable and excessive, and it failed to consider valid substantial differences in situation among individual aliens who were required to pay it. In *Olivarez v. Sandiganbayan*, 248 SCRA 700, it was held that when the Mayor issued a permit in favor of unidentified vendors while imposing numerous requirements upon the Baclaran Credit Cooperative, he violated the equal

protection clause because he failed to show that the two were not similarly situated.

ii) The constitutional right to equal protection of the law is not violated by an executive order, issued pursuant to law, granting tax and duty incentives only to businesses and residents within the “secured area” of the Subic Special Economic Zone and denying them to those who live within the Zone but outside such “fenced-in” territory. The Constitution does not require absolute equality among residents; it is enough that all persons under like circumstances or conditions are given the same privileges and required to follow the same obligations. In short, a classification based on valid and reasonable standards does not violate the equal protection clause [*Tiu v. Court of Appeals*, G.R. No. 127410, January 20, 1999]. This was reiterated in *Coconut Oil Refiners Association v. Torres*, G.R. No. 132527, July 29, 2005.

iia) But the compromise agreement between the PCGG and the Marcos family providing that the assets to be retained by the Marcos family are exempt from all taxes violates the equal protection clause. Any special grant of tax exemption in favor of the Marcos family would constitute class legislation [*Chavez v. PCGG*, G.R. No. 130716, December 9, 1998].

D. Searches and seizures. fSec. 2. Art. III: “*The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue, except upon probable cause to be determined personally by a judge, after examination under oath or affirmation of the complainant and the witnesses he may produce, particularly describing the place to be searched, or the persons or things to be seized.*’]

1. Scope of the protection.

a) The protection is available to all persons, including aliens, whether accused of a crime or not. Artificial persons are also entitled to the guarantee, although they may be required to open their books of accounts for examination by the State in the exercise of police and taxing powers. See *Moncada v. People’s Court*, 80 Phil 1.

b) The right is personal; it may be invoked only by the person entitled to it [*Stonehill v. Diokno*, 20 SCRA 383]. As such, the right may be waived [*Lopez v. Commissioner of Customs*, 68 SCRA 320], either expressly or impliedly [*People v. Malasugui, infra*], but the waiver must be made by the person whose right is invaded, not by one who is not duly authorized to effect such waiver [*People v. Damaso*, 212 SCRA 457].

c) The right applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. The protection cannot extend to acts committed by private individuals so as to bring them within the ambit of alleged unlawful intrusion by the government [*People v. Marti*, 193 SCRA 57]. This is reiterated in *Waterous Drug Corporation v. NLRC*, G.R. No. 113271, October 16, 1997, where the Supreme Court said that the Bill of Rights does not protect citizens from unreasonable searches and seizures by private individuals. (In this case, petitioner's officer opened an envelope addressed to the respondent and found therein a check evidencing overprice in the purchase of medicine; the check was then deemed admissible in evidence.) In *People v. Mendoza*, G.R. Nos. 109279-80, January 18, 1999, the same principle was applied relative to the memorandum receipt and mission order (to carry firearms) discovered by the accused-appellant's father-in-law, a private citizen. In *People v. Bongcarawan*, G.R. No. 143944, July 11, 2002, the shabu in the baggage of the accused was found by (private) security officers of the interisland passenger vessel who then reported the matter to the Philippine Coast Guard. The search and seizure of the suitcase and contraband items were carried out without government intervention. Accordingly, the exclusionary rule may not be invoked.

d) What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved [*Valmonte v. De Villa*, 178 SCRA 211]. But where the search and consequent seizure offish allegedly caught by the use of explosives was made without a warrant, and a search warrant was obtained by the officers only much later, it was held that there was a violation of this constitutional guarantee [*Manlavi v. Gacott*, 244 SCRA 50],

e) Objections to the warrant of arrest must be made before the accused enters his plea [*People v. Codilla*, 224 SCRA 104; *People v. Robles*, G.R. No. 101335, June 8, 2000]. Failure to do so constitutes a waiver of his right against unlawful restraint of liberty [*People v. Peñaflorida*, G.R. No. 130550, September 2, 1999, reiterating *Filoteo v. Sandiganbayan*, 263 SCRA 222; *People v. Gastador*, G.R. No. 123727, April 14, 1999]. Indeed, even assuming that their arrest was illegal, their act of entering a plea during their arraignment constituted a waiver by the accused of their right to question the validity of their arrest [*People v. Cachola*, G.R. Nos. 148712-15, January 21, 2004].ⁱ⁾

i) The filing of charges and the issuance of the warrant of arrest against a person invalidly detained will cure the defect of that detention, or at least deny him the right to be released [*Francisco Juan Larranaga v. Court of Appeals*, G.R. No. 130644, March 13, 1998].

2. Some Procedural Rules.

a) The conspicuous illegality of the arrest cannot affect the jurisdiction of the trial court, because even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and any objection thereto is waived when the person arrested submits to arraignment without any objection [*People v. Del Rosario, G.R. No. 127755, April 14, 1999*].

b) It may be conceded, as a matter of policy, that where a criminal case is pending, the Court wherein it is filed, or the assigned branch thereof, has primary jurisdiction to issue the search warrant; and where no such criminal case has yet been filed, the executive judges, or their lawful substitutes, in the areas and for the offense contemplated in Circular 1-91, shall have primary jurisdiction [*Malalaon v. Court of Appeals, 232 SCRA 249*]. This does not mean, however, that a Court, whose territorial jurisdiction does not embrace the place to be searched, cannot issue a search warrant therefor, where the obtention of such search warrant is necessitated and justified by compelling considerations of urgency, subject, time and place [*Ilano v. Court of Appeals, 244 SCRA 346*]. The determination of the existence of compelling considerations of urgency, and the subject, time and place necessitating and justifying the filing of an application for a search warrant with a court other than the court having territorial jurisdiction over the place to be searched and things to be seized or where the materials are found is addressed to the sound discretion of the trial court where the application is filed, subject to review by the appellate court in case of grave abuse of discretion amounting to excess or lack of jurisdiction [*People v. Chui, G.R. No. 142915-16, February 27, 2004*].

c) But the moment an information is filed with the RTC, it is that court which must issue the warrant of arrest. The MTC Judge who continued with the preliminary investigation and issued warrants of arrest violated procedure [*Espino v. Judge Salubre, AM No. MTJ-00-1255, February 26, 2001*]. If the case had already been remanded to the MTCC, after the information for perjury was erroneously filed with the RTC, it was error for the RTC Judge not to recall the warrant of arrest issued, because contrary to her claim, the issuance of a warrant is not a ministerial function of the judge [*Alib v. Judge Labayen, AM No. RTJ-00-1576, June 28, 2001*],

d) Where a search warrant is issued by one court and the criminal action based on the results of the search is afterwards commenced in another court, it is not the rule that a motion to quash the warrant or to retrieve things thereunder seized may be filed only with the issuing court. Such a motion may be filed for the first time in either the issuing court or that in which the criminal action is pending [*People v. Court of Appeals, G.R. No. 126379, June*

26, 1998]. However, the remedy is alternative, not cumulative. The court first taking cognizance of the motion does so to the exclusion of the other, and the proceedings thereon are subject to the Omnibus Motion Rule and the rule against forum-shopping [*Garaygay v. People*, G.R. No. 135503, July 6, 2000].

e) The judge may order the quashal of the warrant he issued even after the same had already been implemented, particularly when such quashal is based on the finding that there is no offense committed. This does not trench upon the duty of the prosecutor. The effect of such a quashal is that the items seized shall be inadmissible in evidence [*Solid Triangle Sales v. Sheriff, RTC QC, Br. 33, G.R. No. 144309, November 30, 2001*]. Indeed, when the warrant is shown to be defective, all evidence obtained from the search shall be inadmissible in evidence [*People v. Francisco*, G.R. No. 129035, August 20, 2002].

3. *Only a judge may validly issue a warrant.* The Constitution grants the authority to issue a warrant of arrest or a search warrant only to a judge upon fulfillment of certain basic constitutional requirements. In *Salazar v. Achacoso*, 183 SCRA 145, Art. 38 of the Labor Code of the Philippines, which grants the Secretary of Labor and Employment the authority to issue orders of arrest, search and seizure, was declared unconstitutional, because the Labor Secretary is not a judge. In *Republic (PCGG) v. Sandiganbayan*, 255 SCRA 438, an order issued by PCGG directing the respondent to submit all bank documents which the PCGG representative might find necessary and relevant to the investigation was held to be in the nature of a search warrant which the PCGG cannot validly issue, because the PCGG is not a Judge.

a) *Exception.* However, in *Morano v. Vivo*, 20 SCRA 562, it was held that orders of arrest may be issued by administrative authorities, but only for the purpose of carrying out a final finding of a violation of law, e.g., an order of deportation or an order of contempt, but not for the sole purpose of investigation or prosecution. This is reiterated in *Sy v. Domingo, infra.*, where the Supreme Court held that the Bureau of Immigration may issue a warrant of arrest only for the purpose of carrying out a final decision of deportation or when there is sufficient proof of the guilt of the alien. Thus, in *Tran Van Nghia v. Liwag*, 175 SCRA 318, the Supreme Court nullified the order of arrest issued by the Commissioner of Immigration, because it was issued simply on the basis of a complaint filed with the Commission on Immigration against the alien. Similarly, in *Board of Commissioners, Commission on Immigration and Deportation v. Judge de la Rosa*, 197 SCRA 853, it was held that a warrant of arrest issued by the Commissioner of Immigration for purposes of investigation is null and void for being unconstitutional.

b) An aberrant case is *Harvey v. Santiago*, 162 SCRA 840, where the Supreme Court upheld the validity of the arrest of pedophiles on orders of Immigration Commissioner Santiago because there was probable cause, occasioned by months of surveillance made by CID agents on the suspected pedophiles. According to the Court, the requirement that probable cause is to be determined only by a judge does not extend to deportation cases which are not criminal but purely administrative in nature. The existence of probable cause justified the arrest, as well as the seizure of the photo negatives, photographs and posters without warrant. Furthermore, petitioners were found with young boys in their respective rooms, and under the circumstances, the CID agents had reasonable ground to believe that petitioners had committed "pedophilia" which, though not punished under the Revised Penal Code, is behavior offensive to public morals and violative of the declared policy of the State to promote and protect the physical, moral, spiritual and social wellbeing of our youth. [Note that this case was decided prior to the enactment of R.A. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act)].

4. Requisites of a Valid Warrant.

a) Probable Cause. Such facts and circumstances antecedent to the issuance of the warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof [*People v. Syjuco*, 64 Phil 667; *Alvarez v. CFI*, 64 Phil 33]. For a search: "such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched" [*Burgos v. Chief of Staff*, 133 SCRA 800]. See also *Corro v. Using*, 137 SCRA 541; *Prudente v. Dayrit* 180 SCRA 69.

i) Must refer to one specific offense [*Asian Surety v. Herrera*, 54 SCRA 312; *Castro v. Pabalan*, 70 SCRA 477]. However, in *People v. Dichoso*, 223 SCRA 174, it was held that the Dangerous Drugs Act of 1972 is a special law that deals specifically with dangerous drugs which are subsumed into prohibited and regulated drugs, and defines and penalizes categories of offenses which are closely related or which belong to the same class or species, thus, one search warrant may be validly issued for several violations thereof. This is reiterated in *People v. Salanguit*, G.R. No. 133254-55 April 19 2001.

ii) Probable cause as applied to illegal possession of firearms should be such facts and circumstances which would lead a reasonably discreet and prudent man to believe that a person is in possession of a firearm

and that he does not have the license or permit to possess the same. In *Nala v. Barroso, G.R. No. 153087, August 7, 2003*, nowhere in the affidavit of the witness or the applicant was it mentioned that the petitioner had no license to possess a firearm. Neither was there a certification from the appropriate government agency that petitioner was not licensed to possess a firearm. The search warrant is, therefore, null and void.

iii) In cases involving violation of PD 49 (Protection of Intellectual Property), a basic requirement for the validity of the search warrant is the presentation of the master tape of the copyrighted films from which the pirated films are supposed to have been copied [*20th Century Fox v. Court of Appeals, 162 SCRA 655*]. But this decision, which was promulgated on August 19, 1988, should apply only prospectively, and should not apply to parties who relied on the old doctrine and acted in good faith [*Columbia Pictures v. Court of Appeals, 237 SCRA 367*, cited in *Columbia Pictures v. Court of Appeals, 262 SCRA 219*].

iv) Where a search warrant was issued for the seizure of shabu and drug paraphernalia, but probable cause was found to exist only with respect to the shabu, the warrant cannot be invalidated *in toto*; it is still valid with respect to the shabu [*People v. Salanguit, supra*].

b) Determination of probable cause personally by a judge. In *Placer v. Villanueva, 126 SCRA 463*, reiterated in *Lim v. Judge Felix, 194 SCRA 292*, the Supreme Court ruled that the issuance of a warrant of arrest is not a ministerial function of the judge. While he could rely on the findings of the fiscal, he is not bound thereby. Thus, the determination of probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicant and the witnesses [*Kho v. Judge Makalintal, G.R. No. 94902-06, April 21, 1999*, citing *Luna v. Plaza, 26 SCRA 310*]. In *People v. Inting, 187 SCRA 788*, the Supreme Court emphasized that the determination of probable cause is the function of the judge; and the judge alone makes this determination. The same rule applies in election offenses even if, in such cases, the preliminary investigation is done by the Comelec [*People v. Delgado, 189 SCRA 715*].¹⁰

i) *Issuance of a Warrant of Arrest.* It is sufficient that the judge “personally determine” the existence of probable cause. It is not necessary that he should personally examine the complainant and his witnesses [*Soliven v. Makasiar, 167 SCRA 393*]. In *Reyes v. Montesa, 247 SCRA 85*, the Supreme Court said that a hearing is not necessary for the determination of the existence of probable cause for the issuance of a warrant of arrest. The judge should evaluate the report and

prosecutor or require the submission of the supporting affidavits of witnesses to aid him in determining whether probable cause exists. Likewise, in *Webb v. De Leon*, 247 SCRA 652, it was held that the judge would simply personally review the initial determination of the prosecutor to see if it is supported by substantial evidence. He merely determines the probability, not the certainty, of guilt of the accused and, in so doing, he need not conduct a *de novo* hearing. Indeed, in the preliminary examination for the issuance of a warrant of arrest, the judge is not tasked to review in detail the evidence submitted during the preliminary investigation; it is sufficient that the judge should personally evaluate the report and supporting documents submitted by the prosecution in determining probable cause [*Cruz v. People*, 233 SCRA 439]. This was reiterated in *People v. Court of Appeals and Cerbo*, G.R. No. 126005, January 21, 1999 and in *Raro v. Sandiganbayan*, July 14, 2000.

ia) Following established doctrine and procedure, the judge shall (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if, on the basis thereof, he finds no probable cause, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. It is not obligatory, but merely discretionary, upon the judge to issue a warrant of arrest, even after having personally examined the complainant and his witnesses for the determination of probable cause. Whether it is necessary to arrest the accused in order not to frustrate the ends of justice is left to his sound judgment and discretion [*Cruz v. Judge Areola*, A.M. No. RTJ-01-1642, March 06, 2002].

ib) Thus, the determination of probable cause for the issuance of a warrant of arrest is within the exclusive province of the judge. In *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, the Supreme Court, citing *People v. Judge Inting*, 189 SCRA 788, said: (1) the determination of probable cause is a function of the judge and the judge alone; (2) the preliminary inquiry made by the prosecutor does not bind the judge, as it is the report, the affidavits, the transcript of stenographic notes, if any, and all other supporting documents behind the prosecutor's certification which are material in assisting the judge in his determination of probable cause; (3) judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of the warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or be released; and (4) only a judge may issue a warrant of arrest. In this case, the Supreme Court found that there was undue haste in the filing of the information; the State Prosecutors were over-eager to file the case and secure the warrant of arrest. The Sandiganbayan should have taken careful note of

the contradictions in the testimony of complainant's witnesses as well as the improbabilities in the prosecution evidence.

ic) If the judge relied solely on the certification of the Prosecutor [since all the records of the preliminary investigation were still in Masbate], then he cannot be said to have personally determined the existence of probable cause, and, therefore, the warrant of arrest issued by him is null and void [*Lim v. Felix*, 194 SCRA 292, reiterated in *Roberts v. People*, 294 SCRA 307], In *Ho v. People*, G.R. No. 106632, October 9, 1997, the warrant of arrest issued by the Sandiganbayan was invalidated because it was based merely on the report and recommendation of the investigating prosecutor; there was no showing that the court personally determined the existence of probable cause by independently examining sufficient evidence submitted by the parties during the preliminary investigation. Likewise, it was held that there is failure to comply with this requirement where the judge merely relied on the resolution of the Panel of Prosecutors and the latter's certification that probable cause existed. Judges and prosecutors should distinguish the preliminary inquiry, which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper, which ascertains whether the offender should be held for trial or released. The first is made by the judge; the second is done by the prosecutor [*Allado v. Diokno*, 232 SCRA 192].

ic1) Sec. 6, Rule 112 of the Revised Rules on Criminal Procedure now embodies the rulings in *Soliven* and *Lim*, with modifications, as follows: "Sec. 6. When warrant of arrest may issue. - (a) By the Regional Trial Court - Within ten days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Sec. 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five days from notice and the issue must be resolved by the court within thirty days from the filing of the complaint or information."

ic2) Thus, in *Okabe v. Judge Gutierrez*, G.R. No. 150185, May 27, 2004, the Supreme Court found the respondent judge to have committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause for the petitioner's arrest, because the investigating prosecutor had submitted to the respondent judge only the resolution after his preliminary investigation of the case and the affidavit-complaint of the private

complainant. The prosecutor failed to include the affidavits of the witnesses of the private complainant, and the latter's reply affidavit, the counter-affidavit of the petitioner, as well as the evidence adduced by the private complainant.

id) More reprehensible was the action of the judge who issued a warrant of arrest not only without following the procedure to determine the existence of probable cause but was so negligent not to notice that there was not even a prosecutor's certification to rely upon because there was no information that had yet been filed in court [*Talingdan v. Judge Eduarte, A. M. No. RTJ-01-1610, October 02, 2001*], However, a judge was likewise sanctioned for failing to issue a warrant of arrest where there was a clear showing of the existence of probable cause, and as a result of such failure, the accused could no longer be apprehended [*Concerned Citizen of Maddela v. Judge Yadao, A.M. No. RTJ-01-1639, December 12, 2002*].

ie) The determination of probable cause during a preliminary investigation is judicially recognized as an executive function and is made by the prosecutor [*Ledesma v. Court of Appeals, G.R. No. 113216, September 5, 1997*]. The primary objective of a preliminary investigation is to free a respondent from the inconvenience, expense, ignominy and stress of defending himself in the course of a formal trial, until the reasonable probability of his guilt has been passed upon in a more or less summary proceeding by a competent officer designated for that purpose. In *Crespo v. Mogul*, it was emphasized that the public prosecutor controls and directs the prosecution of criminal offenses, and where there is a clash of views between a judge who did not investigate and a fiscal who conducted a re-investigation, those of the prosecutor would normally prevail. Accordingly, in *Gozosv. Tac-An, G.R. No. 123191, December 17, 1998*, where the trial judge conducted an inquiry not only to determine the existence of probable cause, but also to determine what the charge should be and who should be charged, it was held that the judge acted beyond his authority. Thus, in *Dupasquier v. Court of Appeals, G.R. No. 112089, January 24, 2001*, it was held that courts must respect the discretion of the prosecutor in his findings and determination of probable cause in preliminary investigation. When the prosecutor is not convinced that he has the quantum of evidence at hand to support the averments, he is under no obligation to file the criminal information.

if) In the cases when it is the judge who himself conducts the preliminary investigation, for him to issue a warrant of arrest, the investigating judge must: (1) have examined, under oath and in writing, the complainant and his witnesses; (2) be satisfied that there is probable cause; and (3) that there is a need to place the respondent under immediate custody in order not to frustrate the ends of justice [*Mantaring v. Judge Roman, 254 SCRA158*].

ii) *Issuance of a Search Warrant.* Section 4, Rule 126 of the Rules of Court requires that the judge must personally examine in the form of searching questions and answers, in writing and under oath, the complainants and any witnesses he may produce on facts personally known to them, and attach to the record their sworn statements together with any affidavits submitted. See *Silva v. Presiding Judge, 203 SCRA 140; Mata v. Bayona, 128 SCRA 388.*

iiia) A search warrant proceeding is, in no sense, a criminal action or the commencement of a prosecution. The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in nature, and made necessary because of public necessity. It resembles in some respect with what is commonly known as John Doe proceedings. While an application for a search warrant is entitled like a criminal action, it does not make it such an action [*United Laboratories, Inc. v. Isip, G.R. No. 163958, June 28, 2005*],

iiib) Where the judge failed to conform with the essential requisites of taking the deposition in writing and attaching them to the record, it was held that search warrant is invalid, and the fact that the objection thereto was raised only during the trial is of no moment, because the absence of such depositions was discovered only after the arrest and during the trial [*People v. Mamaril, G.R. No. 147607, January 22, 2004*]. However, the Bill of Rights does not make it an imperative necessity that the depositions be attached to the records of an application for a search warrant. The omission would not be fatal if there is evidence on record showing that such personal examination was conducted and what testimony was presented [*People v. Tee, G.R. Nos. 140546-47, January 20, 2003*].

iiic) Where the trial judge not only asked searching questions but leading questions, as well, the same was not considered improper, because the complainant and the witnesses were reticent and had to be made to explain [*Flores v. Sumaljag, 290 SCRA 568*].

c) After examination, under oath or affirmation, of the complainant and the witnesses he may produce. The personal examination must not be merely routinary or *pro forma*, but must be probing and exhaustive. The purpose of this rule is to satisfy the examining magistrate as to the existence of probable cause. ⁱ⁾

i) For the procedure in the issuance of a warrant of arrest, see *Soliven v. Makasiar, supra*.

ii) The evidence offered by the complainant and his witnesses should be based on their own personal knowledge and not on mere information or belief. The oath required must refer to the truth of the facts within the personal knowledge of the applicant or his witnesses, because the purpose is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause [*Cupcupin v. People*, G.R. No. 132389, November 19, 2002]. In *Alvarez v. CFI*, 64 Phil. 33, "reliable information" was held insufficient; in *Burgos v. Chief of Staff*, 133 SCRA 800, "evidence gathered and collated by our unit" was not sufficient; and in *Quintero v. NBI*, 162 SCRA 467, NBI Agent Castro knew nothing of his personal knowledge that Quintero committed an offense, while Congressman Mate's statement was characterized by several omissions and replete with conclusions and inferences, lacking the directness and definiteness which would have been present had the statement dealt with facts which Congressman Mate actually witnessed. In *Sony Music Entertainment v. Judge Espanol*, G.R. No. 156804, March 14, 2005, the Supreme Court said that absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of the search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, the issuance being, in legal contemplation, arbitrary. In *Mata v. Bayona*, 128 SCRA 388, it was held that mere affidavits of the complainant and his witnesses were not enough to sustain the issuance of a search warrant.

iii) But in *People v. Wooicock*, 244 SCRA 235, where the police officers acted not merely on the information given by the Thai Royal Police, but also conducted thorough surveillance on the accused, it was held that the police officers had personal knowledge.

iv) In *Columbia Pictures v. Judge Flores*, 223 SCRA 761, the Supreme Court held that the judge must strictly comply with the constitutional and statutory requirements for the issuance of a search warrant, including the need to personally examine the applicant and the witnesses through searching questions. In *People v. Delos Reyes*, G.R. No. 140657, October 25, 2004, the Supreme Court said that it is axiomatic that the examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. If the Judge fails to determine probable cause by personally examining the applicant and his witnesses in the form of searching questions before issuing a search warrant, it constitutes grave abuse of discretion.

d) Particularity of description. In *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, it was held that this requirement is primarily meant to enable the law enforcers serving the warrant to (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items;

and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. Earlier, in *Corro v. Using*, 137 SCRA 541, the Court said that the evident purpose of this requirement is to leave the officers of the law with no discretion regarding what articles they should seize, to the end that unreasonable searches and seizures may not be made and abuses may not be committed. It is also aimed at preventing violations of security of persons and property, and unlawful invasions of the sanctity of the home, and giving remedy against such usurpation when attempted [*People v. Damaso*, 212 SCRA 457].

i) "General warrants" are proscribed and unconstitutional [*Nolasco v. Pano*, 139 SCRA 152; *Burgos v. Chief of Staff*, 133 SCRA 800], In *Tambasen v. People*, 246 SCRA 184, where the search warrant charged violations of two special laws, it was considered a "scatter-shot warrant", and was declared null and void. Indeed, as held in *People v. Tee*, *supra.*, what the Constitution seeks to avoid are search warrants of broad and general characterization or sweeping descriptions which will authorize police officers to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to an offense.

ii) *Warrant of Arrest*. A warrant of arrest is said to particularly describe the person to be seized if it contains the name/s of the person/s to be arrested. If the name of the person to be arrested is not known, then a "John Doe" warrant may be issued. A "John Doe" warrant will satisfy the constitutional requirement of particularity of description if there is some *descriptio persona* which will enable the officer to identify the accused.

ia) In *Pangandaman v. Casar*, 159 SCRA 599, warrants issued against "50 John Does", none of whom the witnesses could identify, were Considered as "general warrants", and thus, void.

iii) *Search Warrant*. A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow [*People v. Rubio*, 57 Phil 384]; or when the description expresses a conclusion of fact, not of law, by which the warrant officer may be guided in making the search and seizure; or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued [*Bache & Co. v. Ruiz*, 37 SCRA 823]. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence other than those articles, to prove said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence [*Columbia Pictures v. Court of Appeals*, G. R. No. 111267, September 20, 1996].

iiia) However, in *Kho v. Judge Makalintal*, G.R. No. 94902- OS, April 21, 1999, it was held that the failure to specify detailed descriptions in the warrant does not necessarily make the warrant a general warrant. Citing Justice Francisco, the Supreme Court said that the “description of the property to be seized need not be technically accurate nor necessarily precise, and its nature will necessarily vary according to whether the identity of the property, or its character, is a matter of concern. The description is required to be specific only in so far as circumstances will allow.” Thus, in *People v. Tee, supra.*, “an undetermined amount of marijuana” was held to satisfy the requirement for particularity of description.

iiib) Furthermore, a search warrant is severable. Thus, in *Uy v. Bureau of Internal Revenue*, G.R. No. 129651, October 20, 2000, the Supreme Court said that the general description of most of the documents in the warrant — if there are others particularly described — will not invalidate the entire warrant. Those items which are not particularly described may simply be cut off without destroying the whole warrant. This ruling is reiterated in *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004.

iiic) Only the articles particularly described in the warrant may be seized. In *People v. Salanguit, supra.*, where the warrant authorized only the seizure of shabu, and not marijuana, the seizure of the latter was held unlawful. In *Del Rosario v. People*, G.R. No. 142295, May 31, 2001, the Supreme Court said that the search warrant was no authority for the police officers to seize the firearm which was not mentioned, much less described with particularity, in the warrant. In *Veroy v. Layague*, 210 SCRA 97, it was held that even while the offense of illegal possession of firearms is *malum prohibitum*, it does not follow that the subject firearm is illegal *per se*. Thus, inasmuch as the consent to the search was limited in scope to the search for NPA rebels, the confiscation of the firearm was held invalid.

iiid) Place to be searched. The place to be searched should, likewise be particularly described. In *Paper Industries Corporation of the Philippines v. Asuncion*, 307 SCRA 253, the search warrant issued to search the compound of petitioner for unlicensed firearms was held invalid for failing to describe the place with particularity, considering that the compound is made up of 200 buildings, 15 plants, 84 staff houses, 1 airstrip, 3 piers, 23 warehouses, 6 depots, and 800 miscellaneous structures, spread out over 155 hectares.

iiidl) The place to be searched, as described in the warrant, cannot be amplified or modified by the peace officers' own personal

knowledge of the premises or the evidence which they adduced in support of their application for a warrant. Thus, where the warrant designated the place to be searched as "Abigail's Variety Store, Apt. 1207, Area F, Bagong Buhay Ave., Sapang Palay, San Jose del Monte, Bulacan", and the search was made at Apt. No. 1 which was immediately adjacent to the store (but an independent unit), it was held in *People v. Court of Appeals*, G.R. No. 126379, June 26, 1998, that there was an infringement of the constitutional guarantee, the clear intention of the requirement being that the search be confined to the place so described in the warrant. Similarly, in *Yousef Al Ghoul v. Court of Appeals*, G.R. No. 126859, September 4, 2001, where the search warrant authorized the search of Apartment No. 2, Obinia Compound, Caloocan City, but the searching party extended the search and seizure of firearms to Apartment No. 8 in the same compound, the Supreme Court, while upholding the validity of the search of Apartment No. 2, invalidated the search done at Apartment No.

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iiie) The Constitution requires search warrants to particularly describe not only the place to be searched, but also the persons to be searched. In *People v. Tiu Won Chua*, G.R. No. 149878, July 1, 2003, the validity of the search warrant was upheld despite the mistake in the name of the persons to be searched, because the authorities conducted surveillance and a test-buy operation before obtaining the search warrant and subsequently implementing it. They had personal knowledge of the identity of the persons and the place to be searched, although they did not specifically know the names of the accused. The situation in *People v. Priscilla del Norte*, G.R. No. 149462, March 29, 2004, is different. The search warrant was issued against one Ising Gutierrez Diwa, residing at 275 North Service Road corner Cruzada St., Bagong Barrio, Caloocan City. Arrested in the house at the address named, and eventually charged, was Priscilla del Norte, who claimed to be a resident of 376 Dama de Noche, Caloocan City, as later shown by the certification of the Barangay Chairman, a receipt evidencing rental payment for the house at Dama de Noche, and the school ID of her daughter who testified in court. The authorities did not conduct any prior surveillance. It was only when they implemented the warrant that they coordinated with barangay officials, and one of the barangay officials informed the police officers that Ising Gutierrez Diwa and Priscilla del Norte were one and the same person, but said barangay official was not presented in court. Thus, the Court held that the prosecution failed to prove the guilt of the accused beyond reasonable doubt.⁵

5. Properties subject to seizure [Sec. 2, Rule 126, Rules of Court]:

- (a) Subject of the offense; (b) Stolen or embezzled property and other proceeds or fruits of the offense; and (c) Property used or intended to be used as means for the commission of an offense.

a) It is not necessary that the property to be searched or seized should be owned by the person against whom the warrant is issued; it is sufficient that the property is within his control or possession [*Burgos v. Chief of Staff*, 133 SCRA 800].

6. *Conduct of the Search.* Sec. 7, Rule 126, *Rules of Court*, requires that no search of a house, room or any of the premises shall be made except in the presence of the lawful occupant thereof or any member of his family, or in the absence of the latter, in the presence of two witnesses of sufficient age and discretion, residing in the same locality. Failure to comply with this requirement invalidates the search [*People v. Gesmundo*, 219 SCRA 743].

a) The police officers may use force in entering the dwelling if justified by Rule 126 of the Rules of Court. In *People v. Salanguit*, *supra*, the occupants of the house refused to open the door despite the fact that the searching party knocked on the door several times, and the agents saw suspicious movements of the people inside the house. These circumstances justified the searching party's forcible entry, as it was done on the apprehension that the execution of their mission would be frustrated unless they did so.

b) But in *People v. Benny Go*, G.R. No. 144639, September 12, 2003, even as the police officers were armed with a Search Warrant of appellant's residence and to seize shabu, the Supreme Court declared that the manner in which the officers conducted the search was unlawful. The police officers arrived at appellant's residence and to gain entry into the house, they "side-swiped (sinagi) a little" appellant's car which was parked outside. Jack Go, appellant's son, the only one present in the house at the time, opened the door, and the policemen at once introduced themselves, informed Jack that they had a warrant to search the premises, and promptly handcuffed Jack to a chair.

7. *Warrantless arrests* [Sec. 5, Rule 113, *Rules of Court*]. A peace officer, or even a private person, may effect an arrest without a warrant:

a) When the person to be arrested has committed, is»actually committing, or is attempting to commit an offense in his presence. ⁱ⁾

i) In *Umil v. Ramos*, 187 SCRA 311, the Supreme Court held that rebellion is a continuing offense. Accordingly, a rebel may be arrested at any time, with or without a warrant, as he is deemed to be in the act of committing the offense at any time of day or night. See also the *Resolution on the Motion for Reconsideration*, 202 SCRA 252. However, even if in *Parulan v. Director of Prisons*, kidnapping with serious illegal

continuing crime, it can be considered as such only when the deprivation of liberty is persistent and continuing from one place to another [*Francisco Juan Larranaga v. Court of Appeals, supra.*].

ii) In *People v. Sucro*, 195 SCRA 388, it was held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant. The offense is deemed committed in the presence of or within the view of the officer.

iii) *Hot pursuit*. In *People v. de Lara*, September 5, 1994, and reiterated in *People v. Reception*, G.R. No. 141943, November 13, 2002, the arrest of the accused inside his house following hot pursuit of the person who committed the offense *in flagrante* was held valid.

iv) An arrest made after an entrapment operation does not require a warrant of arrest; it is reasonable and valid under Sec. 5 (a), Rule 113 [*People v. Bohol*, G.R. No. 171729, July 28, 2008].

iva) A “buy-bust” operation is a valid *in flagrante* arrest. The subsequent search of the person arrested and of the premises within his immediate control is valid as an incident to a lawful arrest [*People v. Hindoy*, G.R. No. 132662, May 10, 2001]. This ruling is reiterated in *People v. Gonzales*, G.R. No. 113255-56, July 19, 2001, where the Supreme Court added that the defense of “frame-up”, like alibi, is viewed with disfavor, as it can easily be concocted, and thus, in the absence of proof of any ill motive on the part of the apprehending officers, this defense will not prosper. In *People v. Yong Fung Yuen*, G.R. No. 145014-15, February 18, 2004, the Court said that an allegation of frame-up and extortion by the police officers is a common and standard defense in most dangerous drugs cases. It is, however, viewed with disfavour, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing. See also *People v. Chua*, G.R. No. 133789, August 23, 2001 and *People v. Lacap*, G.R. No. 139114, October 23, 2001. The well-entrenched principle is that the accused commits the crime of illegal sale of drugs as soon as he consummates the sale transaction, whether payment precedes or follows delivery of the drug sold [*People v. Chu*, G.R. No. 143793, February 17, 2004].

ivb) However, in *People v. Rodriguez*, 205 SCRA 791, the police officer, acting as poseur-buyer in a “buy-bust operation”, instead of arresting the suspect and taking him into custody after the sale, returned to police headquarters and filed his report. It was only in the evening of the same day that the police officer, without a warrant, arrested the suspect at the latter’s

house where dried marijuana leaves were found and confiscated. It was held that the arrest and the seizure were unlawful.

v) But to constitute a valid *in flagrante* arrest, as held in *People v. Molina, G.R. No. 133917, February 19, 2001*, reiterated in *People v. Sy Chua, G.R. Nos. 136066-67, February 4, 2003*, in *People v. Tudtud, G.R. No. 144037, September 26, 2003*, and in the more recent *People v. Nuevas, G.R. No. 170233, February 22, 2007*, “reliable information” alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, is not sufficient to constitute probable cause to justify the arrest. It is necessary that two requisites concur: [1] the person to be arrested must execute an overt act indicating that he had just committed, is actually committing, or is attempting to commit a crime; and [2] such overt act is done in the presence or within the view of the arresting officer.

va) In *Molina*, the accused while holding a bag on board a tricycle cannot be said to be committing, attempting to commit or to have committed a crime. It matters not that the accused responded, “Boss, if possible, we will settle this”, as such response is an equivocal statement which, standing alone, will not constitute probable cause to effect an *in flagrante* arrest. This is reiterated in *People v. Galvez, G.R. No. 136790, March 26, 2001*, and *People v. Conde, G.R. No. 113269, April 10, 2001*, although in these cases, for failure of the accused to assert their constitutional right prior to arraignment, and by entering a plea of not guilty and participating actively in the trial, they were deemed to have waived their right to raise the issue of the illegality of the arrest.

vb) In *Sy Chua*, the apprehending officers had already prior knowledge from the very same informant (who had been telling them about the activities of the accused for two years prior to the actual arrest). Considering that the identity, address and activities of the suspected culprit was already ascertained two years previous to the actual arrest, there was no reason why the police officers could not have obtained a judicial warrant before arresting the accused appellant and searching him.

vi) For a successful prosecution for the sale of illegal drugs after a buy-bust operation, what is important is the fact that the poseur-buyer received the goods from the accused-appellant and the same was presented in court as evidence. There is no rule of law that requires that there must be simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher. There is also no rule that requires the police to use only marked money in buy-bust operations. The failure to use marked money or to present it in evidence is not material since the sale cannot be

essentially disproved, by the absence thereof [*People v. Antinero, G.R. No. 137612, September 25, 2001*].

via) However, the mere discovery of marked money on the person of the accused did not mean that he was caught in the act of selling marijuana. The marked money was not prohibited *per se*. Even if it were, that fact alone would not retroactively validate the warrantless search and seizure [*People v. Enrile, 222 SCRA 586*],

b) When an offense had just been committed and there is probable cause to believe, based on his personal knowledge of facts or of other circumstances, that the person to be arrested has committed the offense.

i) Under this paragraph, two stringent requirements must be complied with, namely: (i) an offense had just been committed, and (ii) the person making the arrest has probable cause to believe, based on his personal knowledge of facts or of other circumstances, that the person to be arrested had committed it. Hence, there must be a large measure of *immediacy* between the time the offense is committed and the time of the arrest, and if there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured. Aside from the sense of immediacy, it is also mandatory that the person making the arrest has *personal knowledge* of certain facts indicating that the person to be taken into custody has committed the crime.

ii) In *People v. Del Rosario, G.R. No. 127755, April 14, 1999*, it was held that these requirements were not complied with. The qrest came a day after the offense was committed and thus, the offense had not been “just” committed. Furthermore, the arresting officers had no personal knowledge of facts indicating that the person to be arrested had committed the offense, since they were not present and were not actual eyewitnesses to the crime, and they became aware of the identity of the driver of the getaway tricycle only during the custodial investigation. The same conclusion was reached in *People v. Samus, G.R. No. 135957, September 17, 2002*, inasmuch as the killing was not done in the presence of the arresting officer, and the incident took place eight days before the warrantless arrest. In *Go v. Court of Appeals, 206 SCRA 138*, six days after the shooting, as the petitioner presented himself before the San Juan Police Station to verify news reports that he was being hunted, the police detained him because an eyewitness had positively identified him as the gunman who shot Maguan. The Court held that there was no valid arrest; it cannot be considered as within the meaning of “the offense had just been committed” inasmuch as six days had already elapsed; neither did the policemen have personal knowledge of facts that Go shot Maguan. In *People*

v. Olivarez, G.R. No. 77865, December 5, 1998, it was held that the warrantless arrest of the accused two days after the discovery of the crime was unlawful. In *People v. Kimura*, 428 SCRA 51, the warrantless arrest of the accused for selling marijuana two days after he escaped was held invalid. Similarly, in *San Agustin v. People*, 432SCRA 392, the warrantless arrest of the barangay chairman for illegal detention seven days after he locked up somebody was declared illegal.

iii) In *People v. Cubcubin*, G.R. No. 136267, October 02, 2001, it was held that the policemen, not having “personal knowledge” of facts indicating that the accused committed the crime, the arrest was invalid.

iv) But in *People v. Gerente*, 219 SCRA 756, where the policemen saw the victim dead at the hospital and when they inspected the crime scene, they found the instruments of death — and the eyewitnesses reported the happening and pointed to Gerente as one of the killers, the warrantless arrest of Gerente only three hours after the killing was held valid, since the policemen had personal knowledge of the violent death of the victim and of the facts indicating that Gerente and two others had killed the victim. Further, the search of Gerente’s person and the seizure of the marijuana leaves were valid as an incident to a lawful arrest. Thus, in *Robin Padilla v. Court of Appeals*, G.R. No. 121917, March 12, 1997, the-Court held that there was a valid arrest, as there was neither supervening event nor a considerable lapse of time between the hit-and-run and the apprehension. After the policemen had stationed themselves at possible exits, they saw the fast approaching vehicle, its plate number, and the dented hood and railings thereof. These formed part of the arresting officers’ personal knowledge of the fact that Padilla’s vehicle was the one involved in the incident. Likewise, in *People v. Abriol*, G.R. No. 123137, October 17, 2001, it was held that the warrantless arrest was valid, as it was made after the fatal shooting and pursuit of a fast-moving vehicle seeking to elude pursuing police officers, and a more than reasonable belief on the part of the police officers that the fleeing suspects aboard the motor vehicle had just engaged in criminal activity.

v) in *Cadua v. Court of Appeals*, G.R. No. 123123, August 19, 1999, the Supreme Court, quoting *Ricardo Francisco, Criminal Procedure*, 2nd ed. (1994), pp. 207-208, said that it has been ruled that “personal knowledge of facts” in arrests without a warrant must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. Peace officers may pursue and arrest without warrant any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace. Probable cause for an arrest without warrant is such a reasonable ground

of suspicion supported by circumstances sufficiently strong in themselves to warrant a reasonable man in believing the accused to be guilty. This was reiterated in *People v. Escordial, G.R. Nos. 138934-35, January 16, 2002*, where the Supreme Court added that the reasonable suspicion must be founded on probable cause, coupled with good faith on the part of the peace officer making the arrest. In *Cadua*, the Supreme Court held that the arrest without warrant was valid. The fact that the robbery case was never brought to trial does not mean that the legality of the arrest was tainted, for such arrest does not depend upon the indubitable existence of the crime. The legality of apprehending the accused would not depend on the actual commission of the crime but upon the nature of the deed, where from such characterization it may reasonably be inferred by the officer or functionary to whom the law at the moment leaves the decision for the urgent purpose of suspending the liberty of the citizen.

vi) However, in *People v.. Bans'il, G.R. No. 120163, March 10, 1999*, the Supreme Court held that there was no probable cause to justify the warrantless arrest, considering the following circumstances: the arresting team was only armed with the knowledge of the suspect's "attire" which the prosecution witness admitted during the trial he could not even remember; the team did not have a physical description of the suspect nor his name; the team was not given a specific place to search as only a vicinity of the Muslim area in Quiapo was given; and the team zeroed in on the accused who were eating halo-halo, which is not a crime in itself. The "bulging waistline", in light of prevailing circumstances, is insufficient to constitute probable cause for the arrest of the accused.

vii) When the attempted arrest does not fall under any of the cases provided in Rule 113, Sec. 5, Rules of Criminal Procedure (for warrantless arrests), the NBI agents could not, regardless of their suspicion, authorize the arrest of the students without a warrant, or even effect the arrest themselves, because only the courts could decide the question of probable cause [*Posadas v. Ombudsman, G.R. No. 131492, September 29, 2000*].

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

d) When the right is voluntarily waived, then the illegality of the arrest may no longer be invoked to effect the release of the person arrested. Appellant is estopped from questioning the illegality of his arrest when he voluntarily submitted himself to the jurisdiction of the court by entering a plea of not guilty

and by participating in the trial [*People v. Satvatieri, G.R. No. 104663, July 24, 1997; People v. de Guzman, 224 SCRA 93; People v. Lopez, 245 SCRA 95; People v. Tidula, 292 SCRA 596; People v. Navarro, G.R. No. 130644, March 13, 1998*]. It is necessary, therefore, that the petitioner should question the validity of the arrest before he enters his plea. Failure to do so would constitute a waiver of his right against unlawful restraint of his liberty [*People v. Cachola, G.R. Nos. 148712-15, January 21, 2004; People v. Penaflonda, G.R. No. 130550, September 2, 1999*, citing *Filoteo v. Sandiganbayan, 263 SCRA 222*]. <

i) Note, however, that the waiver is limited to the illegal arrest. It does not extend to the search made as an incident thereto, or to the subsequent seizure of evidence allegedly found during the search. Thus, when the arrest is incipiently illegal — even if the right to question the same is deemed waived by the accused entering his plea — it follows that the subsequent search is similarly illegal. Any evidence obtained in violation of the constitutional provision is legally inadmissible in evidence under the exclusionary rule [*People v. Peralta, G.R. No. 145176, March 30, 2004*].

ii) In a number of cases, the Supreme Court held that the posting of a bail bond constitutes a waiver of any irregularity attending the arrest [*Callanta v. Villanueva, 77 SCRA 377; Bagcal v. Villaraza, 120 SCRA 525; People v. Dural, 223 SCRA 207; Cojuangco v. Sandiganbayan, G.R. No. 134307, December 21, 1998*]. But under Sec. 26, Rule 114, Revised Rules of Criminal Procedure, an application for, or admission to, bail, shall not bar the accused from challenging the validity of his arrest, provided that he raises the challenge before entering his plea.

iii) The consequent filing of charges and the issuance of a warrant of arrest against a person invalidly detained will cure the defect of such detention or, at least, deny him the right to be released [*Francisco Juan Larranaga v. Court of Appeals, supra.*].

8. Warrantless Searches.

a) When the right is voluntarily waived. For the valid waiver of a constitutional right, it must appear first that the right exists; secondly, that the person involved had knowledge, either actual or constructive, of the existence of such right; and thirdly, that the said person had an actual intention to relinquish the right [*De Garcia v. Locsin, 65 Phil 689*]. The consent must be voluntary, i.e., unequivocal, specific and intelligently given, uncontaminated by any duress or coercion. Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether consent to a

search was, in fact, voluntary, is a question of fact to be determined from the totality of all the circumstances: the age of the defendant, whether he was in a public or secluded location, whether he objected to the search or passively looked on, the education and intelligence of the defendant, the presence of coercive police procedure, the defendant's belief that no incriminating evidence will be found, the nature of police questioning, the environment in which the questioning took place, and the possible vulnerable subjective state of the person consenting. It is the State that has the burden of proving, by clear and convincing evidence, that the necessary consent was obtained and that it was voluntarily and freely given [*Caballes v. Court of Appeals*, G.R. No. 136292, January 15, 2002],

i) *Some cases showing valid waiver.* In *People v. Omaweng*, 213 SCRA 462, the accused, driving a vehicle, was stopped at a checkpoint, and when the vehicle was inspected, the soldiers asked permission to see the contents of a bag which was partially covered by a spare tire. The accused consented, and upon inspection, the bag was found to contain marijuana. In *People v. Lacerna*, G.R. No. 109250, September 5, 1997, the occupants of the taxicab readily consented when the policemen sought permission to search the vehicle. In *People v. Correa*, 285 SCRA 679, where police officers, informed that the accused would deliver marijuana, followed the accused, then later accosted him and one of the policemen opened a tin can in the jeepney of the accused but the accused did not protest, the Supreme Court held that there was consent. In *People v. Cuizon*, 256 SCRA 329, the accused gave written consent for the NBI agents to search his bags. In *People v. Exala*, 221 SCRA 494, the right was deemed waived because the accused did not object to the admissibility of the evidence during the trial, and the submissive stance after the discovery of the bag and the absence of any protest which thus confirmed their acquiescence. In *People v. Ramos*, 222 SCRA 557, the Supreme Court said that the evidence for the prosecution clearly disclosed that Ramos voluntarily allowed himself to be frisked, and that he gave the gun voluntarily to the police. Thus, there was deemed a valid waiver. See also *People v. Fernandez*, 239 SCRA 174.

ia) *Searches of passengers at airports.* In *People v. Gatward*, 267 SCRA 785, it was held that when the accused checked in his luggage as a passenger of a plane, he agreed to the inspection of his luggage in accordance with customs laws and regulations, and thus waived any objection to a warrantless search. In *People v. Susan Canton*, G.R. No. 148825, December 27, 2002, it was held that a search made pursuant to routine airport security procedure is allowed under R.A. 6235, which provides that every airline ticket shall contain a condition that hand-carried luggage, etc., shall be subject to search, and this condition shall form part of the contract between

the passenger and the air carrier. To limit the action of the airport security personnel to simply refusing the passenger entry into the aircraft and sending her home (as suggested by the appellant), and thereby depriving the security personnel of "the ability and facility to act accordingly, including to further search without warrant, in light of such circumstances, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society". Thus, in this case, the strip search in the ladies' room was justified under the circumstances. In *People v. Johnson, G.R. No. 138881, December 18, 2000*, the Supreme Court upheld the validity of searches Conducted on passengers attempting to board an aircraft whose carry-on baggage, as well as checked-in luggage, are subjected to x-ray scans, and passengers themselves are made to pass through metal detectors. Given the minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel, these searches are reasonable. In *People v. Suzuki, G.R. No. 120670, October 23, 2003*, the Supreme Court held that PASCOM agents have the right under the law to conduct searches for prohibited materials or substances at the airport, and to effect the arrest of those found to be carrying such prohibited materials. To simply refuse passengers carrying suspected illegal items to enter the pre-departure area, as claimed by the appellant, is to deprive the authorities of their duty to conduct search, thus sanctioning impotence and ineffectiveness of the law enforcers, to the detriment of society.

ii) *No waiver.* In *People v. Barros*, 231 SCRA 557, the silence of the accused was not construed as consent; rather, it was a "demonstration of regard for the supremacy of the law". In this case the warrantless search was declared invalid because there was no showing of any circumstance which constituted probable cause for the peace officers to search the carton. Neither did the peace officers receive any information or "tip-off" from an informer; nor did they contend that they detected the odor of dried marijuana. In *Aniag v. Comelec*, 237 SCRA 424, the Supreme Court said that, in the face of 14 armed policemen conducting the operation, driver Arellano, being alone and a mere employee of the petitioner, could not have marshalled the strength and the courage to protest against the extensive search conducted on the vehicle. "Consent" given under intimidating or coercive circumstances is not consent within the purview of the constitutional guarantee. In *People v. Tudtud, G.R. No. 144037, September 26, 2003*, the Supreme Court said that acquiescence in the loss of fundamental rights is not to be presumed. The fact that a person failed to object to a search does not amount to permission thereto. In any case, any presumption in favor of regularity would be severely diminished by the allegation of appellants that the arresting officers pointed a gun at them before asking them to open the subject box. Appellant's implied acquiescence, if at all, could not have been more than mere passive conformity given under

coercive or intimidating circumstances and thus, is considered no consent at all within the purview of the constitutional guarantee. Consequently, appellant's lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure. In *Lui v. Matillano*, G.R. No. 141176, May 27, 2004, while admittedly, Paulina Matillano failed to object to the opening of her wooden closet and the taking of their personal properties, such failure to object or resist did not amount to an implied waiver of her right against the unreasonable search and seizure. The petitioners were armed with handguns; petitioner Lui had threatened and intimidated her; and her husband was out of the house when the petitioner and his cohorts conducted the search. Waiver by implication cannot be presumed; there must be clear and convincing evidence of an actual intention to relinquish the right in order that there may be a valid waiver.

iii) *Waiver must be given by the person whose right is violated.* In *People v. Damaso*, 212 SCRA 457, PC officers sent to verify the presence of CPP/NPA members in Dagupan City, reached a house suspected to be rented by a rebel. Outside the house, they saw one Luz Tanciangco (who turned out to be a helper of the accused). The PC officers told Luz that they already knew that she was a member of the NPA, and requested that they be allowed to look around. Luz consented. Inside the house, the team found subversive materials and firearms, which Luz identified as belonging to the accused. The Court held that the constitutional right against unreasonable searches and seizures, being a personal one, cannot be waived by anyone except the person whose rights are invaded, or one who is authorized to do so in his behalf. Here, there was no evidence that Luz was authorized to open the house of the accused in his absence. Accordingly, the search, as well as the seizure, was declared illegal.

iiia) But in *Lopez v. Commissioner of Customs*, 68 SCRA 320, there was deemed a valid waiver where, upon a warrantless search of a hotel room, consent and voluntary surrender of papers belonging to the registered but absent occupant was given by a woman identified as the wife of the occupant although it turned out later that she was, in fact, a "mere manicurist". This ruling was not applied in *People v. Asis*, G.R. No. 142531, October 15, 2002, because at the time the bloodstained pair of shorts was recovered, appellant Formento, together with his wife and mother, was present. Being the subject of the search, he himself should have given consent. Added to this is the fact that the appellant is a deaf-mute who could not understand what was happening at the moment, there being no interpreter to assist him. His seeming acquiescence to the search without a warrant may be attributed to plain and simple confusion and ignorance.

iv) *Scope of the waiver.* In *Veroy v. Layague*, 210 SCRA 97, it was held that where permission to enter the residence is given to search for rebels, it is illegal to search the rooms therein and seize firearms without a search warrant.

b) When there is valid reason to “stop-and-frisk”. In *Manalili v. Court of Appeals*, G.R. No. 113447, October 7, 1997, the Supreme Court upheld the validity of the search as akin to “stop-and-frisk” which, in the landmark U.S. case, *Terry v. Ohio*, was defined as the vernacular designation of the right of a police officer to stop a citizen on the street, interrogate him and pat him for weapons whenever he observes unusual conduct which leads him to conclude that criminal activity may be afoot. In this case, the policemen chanced upon the accused who had reddish eyes, walking in a swaying manner, and who appeared to be high on drugs; thus, the search.

i) *Requisite.* In *People v. Sy Chua*, G.R. Nos. 136066-67, February 4, 2003, the Supreme Court said that for a “stop-and-frisk” situation, the police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter’s outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer’s experience and the surrounding conditions, to warrant the belief that the person to be held has weapons or contraband concealed about him. It should, therefore, be emphasized that a search and seizure should precede the arrest for the principle to apply.

ii) Thus, in *People v. Solayao*, 262 SCRA 255, the Supreme Court found justifiable reason to apply the “stop-and-frisk” rule, because of the drunken actuations of the accused and his companions, and because of the fact that his companions fled when they saw the policemen, and finally, because the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming the vicinity. But the rule was not applied in *Malacatv. Court of Appeals*, G.R. No. 123595, December 12, 1997, where police officers, conducting a patrol on the strength of an information that a Muslim group would explode a grenade, saw petitioner and companions attempting to explode a grenade but who, upon seeing the policemen, desisted and ran away; then, two days later, police officers saw petitioner at a street corner, accosted him when his companions ran away, then searched him and found a grenade. In this case, the Supreme Court said that there was no valid search because there was nothing in the behavior or conduct of the petitioner which could have elicited even mere suspicion other than that his eyes were moving fast. There was no reasonable ground to believe that the petitioner was armed with a deadly weapon.

c) Where the search (and seizure) is an incident to a lawful arrest. Sec. 12, Rule 126, as clarified in the 1985 Revised Rules on Criminal Procedure, provides that "a person lawfully arrested may be searched for dangerous weapons or anything, which may be used as proof of the commission of an offense, without a search warrant". In *People v. Estella, G.R. Nos. 138539-40, January 21, 2003*, the Supreme Court said that the prevailing rule is that the arresting officer may take from the arrested individual any money or property found upon the latter's person — that which was used in the commission of the crime or was the fruit of the crime, or which may provide the person arrested with the means of committing violence or escaping, or which may be used in evidence in the trial of the case. The search must, however, be contemporaneous to the arrest and made within a permissible area of search.

i) *Requisite:* As a rule, the arrest must precede the search; the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search [*People v. Nuevas, G.R. No. 170233, February 22, 2007*].

ia) In order that a valid search may be made as an incident to a lawful arrest, it is necessary that the apprehending officer must have been spurred by probable cause in effecting the arrest which could be considered as one in cadence with the instances of permissible arrests enumerated in Sec. 5(a), Rule 113 of the Rules of Court. In this case, the officers could reasonably assume — since the informant was by their side and had so informed them and pointed out the culprit — that the drugs were in the appellant's luggage, and it would have been irresponsible, if not downright absurd, for them to adopt a "wait-and-see" attitude at the risk of eventually losing their quarry [*People v. Montilla, G.R. No. 123872, January 30, 1998*].

ii) *Some cases illustrating the principle.* In *People v. De la Cruz, 184 SCRA 416*, the Supreme Court said that while it may be conceded that in a "buy-bust" operation, there is seizure of evidence from one's person without a search warrant, nonetheless, because the search is an incident to a lawful arrest, there is no necessity for a search warrant. Similarly, in *People v. Kalubiran, 196 SCRA 645*, where the accused, arrested in a "buy-bust" operation, was frisked by the operatives who found marked money which was used to buy two sticks of marijuana cigarettes and 17 more marijuana cigarettes, the search was deemed valid as an incident to a lawful arrest. In *People v. Musa, 217 SCRA 597*, it was held that in a "buy-bust" operation, the law enforcement agents may seize the marked money found on the person of the pusher immediately after the arrest even without a search warrant.

However, in *People v. Zapanta*, 195 SCRA 200, where, as an incident to a “buy-bust” entrapment operation, a raid of the house of the accused was conducted and one marijuana stick was found under the mat, the Supreme Court said that apart from the uncertainty among the witnesses as to how many marijuana cigarettes, if any, were found in Zapanta’s possession during the raid, the search was made without a warrant; therefore, the marijuana cigarettes seized in the raid were inadmissible in evidence. In *People v. Luisito Go*, G.R. No. 116001, March 14, 2001, where the police saw a gun, plainly visible, tucked in appellant’s waist, and appellant could not show any license for the firearm, the warrantless arrest was held valid, and consequently, the discovery of drug paraphernalia and shabu in appellant’s car, as well as the seizure of the same, was justified.

iia) However, in *People v. Aruta*, G.R. No. 120915, April 13, 1998, the Court invalidated the search and seizure made on a woman, “Aling Rose”, who, upon alighting from a bus, was pointed out by the informant. The Supreme Court declared that in a search and seizure as an incident to a lawful arrest, it is necessary for probable cause to be present, and probable cause must be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed. In this case, the accused was merely crossing the street and was not acting in any manner which would engender a reasonable ground to believe that she was committing or about to commit a crime. [Note that in this case, there was the additional fact that the identity of the accused had been priorly ascertained and the police officers had reasonable time within which to obtain a search warrant.*-The presence of this circumstance distinguishes this case from *People v. Malmstedt*, 196 SCRA 401.]

iii) Cases where search was declared valid without necessarily being preceded by an arrest. In *People v. Sucro*, 195 SCRA 388, the Supreme Court held that a warrantless search, and seizure can be made without necessarily being preceded by an arrest provided that the said search is effected on the basis of probable cause. In *People v. Valdez*, G.R. No. 127801, March 3, 1999, the arrest of the accused and the subsequent search and seizure of the marijuana by SP01 Mariano was held valid on the basis of probable cause. Mariano had probable cause to stop and search the buses coming from Banaue in view of the information he got from the “civilian asset” that somebody having the same appearance as the accused and with a green bag would be transporting marijuana. In *Posadas v. Court of Appeals*, 188 SCRA 288, the Court upheld the validity of a search made by police officers on one who, confronted by the police because “he was acting suspiciously”, ran atoay, although in *People v. Rodriguez*, 232 SCRA 498, the arrest and consequent search of the accused, simply because “he was acting suspiciously” was held

invalid. In *People v. Tangliben*, 184 SCRA 220, where two policemen on surveillance, after receiving a tip from an informer, noticed a person carrying a red bag acting suspiciously, then confronted the person and found inside the bag marijuana leaves, the Supreme Court held that the seizure was valid, as "an incident to a lawful arrest". The Court said that the matter presented urgency; when the informer pointed to the accused as one who was carrying marijuana, the police officers, faced with such on-the-spot information, had to act quickly. There was not enough time to secure a search warrant. In *People v. Malsmstedt*, 198 SCRA 401, where soldiers manning a checkpoint [set up because of persistent reports that vehicles were transporting marijuana and other prohibited drugs] noticed a bulge on the accused's waist, and the pouch bag was found to contain hashish, the search was deemed valid as an incident to a lawful arrest [as the accused was then transporting prohibited drugs] — and there was sufficient probable cause for the said officers to believe that the accused was then and there committing a crime.

iiia) However, in *People v. Chua Ho San*, G.R. No. 128222, June 17, 1999, the Supreme Court said that while a contemporaneous search of a person arrested may be effected for dangerous weapons or proofs or implements used in the commission of the crime and which search may extend to the area within his immediate control where he might gain possession of a weapon or evidence he can destroy, a valid arrest must precede a search. The process cannot be reversed. In this case, there was no valid arrest that could justify the search, because none of the tell-tale clues --- e.g., a bag or package emanating the odor of marijuana or other prohibited drug [*People v. Claudio*, 160 SCRA 646; *People v. Lacerna*, 278 SCRA 561], or a confidential report and/or positive identification by informers of couriers of prohibited drugs and/or the time and place where they will transport the same [*People v. Maspir*, 188 SCRA 751; *People v. Lo Ho Wing*, 193 SCRA 122], or suspicious demeanor or behavior [*People v. Tangliben*, 184 SCRA 220; *Posadas v. Court of Appeals*, 188 SCRA 288], or a suspicious bulge in the waist [*People v. Malmstedt*, 198 SCRA 401] — accepted by this Court as sufficient to justify a warrantless arrest was present. There was no classified information that a foreigner would disembark at Tammocalao Beach bearing prohibited drugs on the date in question. The fact that the vessel that ferried him to shore bore no resemblance to the fishing vessels in the area did not automatically mark him as in the process of perpetrating an offense.

iv) *Permissible area of search*. The warrantless search and seizure as an incident to a lawful arrest may extend beyond the person of the one 'arrested to include the premises or surroundings under his immediate control [*People v. Hindoy*, G.R. No. 132662, May 10, 2002]. Thus, in *People v. Cuenco*, G.R. No. 128277, November 16, 1998, where the accused was

arrested in a “buy-bust” operation while standing by the door of the store which was part of the house, it was proper for the police officers to search the house of the accused, the same being in the area within his immediate control. In *Office of the Court Administrator v. Barron*, A.M. No. RTJ-98-1420, October 8, 1998, where the judge was caught in *flagrante* as he was placing the bundles of money under the driver’s seat of his car, and the money was seized by the NBI agents, it was held that there was no need for a warrant to seize the fruits of the offense, the seizure being incidental to a lawful arrest. The same rule was applied in *People v. Catan*, 205 SCRA 235, where a “buy-bust operation” was made at the house of the accused, and immediately after the purchase, the accused was arrested and a search made of the premises.

iv) Where the accused was frisked and arrested in the street for possession of two cellophane bags of marijuana, and when asked if he had more answered that he had more marijuana at his house, the search conducted by the police officers in the house and the consequent seizure of ten cellophane bags of marijuana was held invalid, because the house was no longer within the reach and control of the accused [*Espano v. Court of Appeals*, 288 SCRA 558]. Likewise, in *People v. Che Chun Ting*, G.R. No. 130568, March 31, 2000, where the accused was outside the apartment unit and in the act of delivering to the poseur-buyer the bag of shabu — and the apartment unit was not even his residence but that of his girlfriend — the inside of the apartment unit was no longer a permissible area of search, as it could not be said to be within his reach and immediate control. The warrantless search therein was, therefore, unlawful. In *People v. Cubcubin*, G.R. No. 136267, July 10, 2001, it was held that, since neither the T-shirt nor the gun seized was within the area of immediate control of the accused, the same could not have been validly seized as an incident to a lawful arrest.

v) *Seizure of allegedly pornographic materials.* In *Pita v. Court of Appeals*, 178 SCRA 362, it was held that the respondents had not shown the required proof to justify a ban and to warrant confiscation of the magazines; they were not possessed of a lawful court order (i) finding the materials to be pornographic, and (ii) authorizing them to carry out a search and seizure. To justify a warrantless search as an incident to a lawful arrest, the arrest must be on account of a crime having been committed. Here, no party has been charged, neither is any charge being pressed against any party. The Supreme Court outlined the procedure to be followed, thus: a criminal charge must be brought against the person/s for purveying the pornographic materials; an application for a search and seizure warrant obtained from the judge (who shall determine the existence of probable cause before issuing such warrant); the materials confiscated brought to court in the prosecution of the accused for the crime charged; the court will determine whether the confiscated items

are really pornographic, and the judgment of acquittal or conviction rendered by the court accordingly.

d) Search of vessels and aircraft.

i) A fishing vessel found to be violating fishery laws may be seized without a warrant on two grounds: firstly, because they are usually equipped with powerful motors that enable them to elude pursuit, and secondly, because the seizure would be an incident to a lawful arrest [*Roldan v. Area*, 65 SCRA 336]. Thus, in *Hizon v. Court of Appeals*, 265 SCRA 517, the Court upheld the warrantless search of a fishing boat made by the police on the strength of a report submitted by Task Force Bantay Dagat.

ii) In *People v. Aminnudin*, 163 SCRA 402, where the accused was searched and arrested upon disembarkation from a passenger vessel, the Court held that there was no urgency to effect a warrantless search, as it is clear that the Philippine Constabulary had at least two days (from the time they received the tip until the arrival of the vessel) within which they could have obtained a warrant to search and arrest the accused. Yet, they did nothing; no effort was made to comply with the law. A similar ruling was made in *People v. Encinada*, G.R. No. 116720, October 2, 1997, when a search and seizure was made of a passenger who disembarked from MA/ Sweet Pearl. The court noted that since the informer's tip was received at 4:00 p.m. on the day before the arrival of the vessel, the authorities had ample time to obtain a search warrant. The *Tangliben* ruling cannot apply because the evidence did not show that the accused was acting suspiciously when he disembarked from the vessel.

iii) The situation in *People v. Saycon*, 236 SCRA 325, is different, because the NARCOM agents received the "tip" in the early morning of July 8, 1992, and the boat on which the accused boarded was due to arrive at 6:00 a.m. on the same day. Furthermore, there was probable cause consisting of two parts: firstly, the agents conducted a "buy-bust" operation; and secondly, they received confidential information that the boat was due to leave soon. ¹¹

iv) Similarly, in *People v. Ayangao*, G.R. No. 142356, April 14, 2004, the informant arrived at the police station at 5:00 a.m. on August 13, 1999, and informed the officers that the appellant would be arriving at 6:00 a.m. that day. The circumstances clearly called for an immediate response from the officers.

e) Search of moving vehicles. A warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant

because the vehicle can be moved quickly out of the locality or jurisdiction in which the warrant may be sought. Searches without warrant of automobiles are also allowed for the purpose of preventing violations of smuggling or immigration laws, provided that such searches are made at borders or "constructive borders", like checkpoints near the boundary lines of the State.

i) One such form of search is the "stop and search" without a warrant at military or police checkpoints, which has been declared not to be illegal per se so long as it is required by the exigencies of public order and conducted in a way least intrusive to motorists [*Valmonte v. de Villa*, 178 SCRA 211].

ii) A checkpoint search may either be a mere routine inspection, or it may involve an extensive search. For a mere routine inspection, the search is normally permissible when it is limited to a mere visual search, where the occupants are not subjected to a physical or body search. On the other hand, when the vehicle is stopped and subjected to an extensive search, it would be constitutionally permissible only if the officers conducting the search had reasonable or probable cause to believe, before the search, that either the motorist is a law offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched [*Caballes v. Court of Appeals*, G.R. No. 136292, January 15, 2002; *People v. Libnao*, G.R. No. 136860, January 20, 2003].

iia) In *Caballes*, petitioner's vehicle was flagged down because the police officers on routine patrol became suspicious when they saw that the back of the vehicle was covered with kakawati leaves. The fact that the vehicle looked suspicious because it is not common for such to be covered with kakawati leaves does not constitute probable cause as would justify the search without a warrant.

iib) On the other hand, in *L/bnao*, it was held that the warrantless search was not bereft of probable cause. The Tarlac Police Intelligence Division had been conducting surveillance operations for three months in the area. The surveillance yielded the information that once a month, appellant and her co-accused transport drugs in big bulks. At 10 p.m. of October 19, 1996, the police received a tip that the two will be transporting drugs that night riding a tricycle. The two were intercepted three hours later, riding a tricycle and carrying a suspicious-looking bag, which possibly contained the drugs in bulk. When they were asked who owned it and what its content was, both became uneasy. Under these circumstances, the warrantless search and seizure of appellant's bag was not illegal.

iic) In *People v. Vinecario*, G.R. No. 141137, January 20, 2004, when the appellants sped away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, the reply of Vinecario that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with the inspection, and the smell of marijuana that emanated from the package wrapped in paper: all these showed probable cause to justify a reasonable belief on the part of the law enforcers that the appellants were offenders of the law and the contents of the backpack were instruments used in, or subject of the offense.

iii) *Some cases.* In *People v. Balingan*, 241 SCRA 277, the search of the luggage of a passenger in a bus after the officers had tailed the bus for 15 to 20 minutes was held valid because of a tip received by the officers. This reiterates the ruling in *People v. Lo Ho Wing*, 193 SCRA 122, where the Court gave approval to a warrantless search done on a taxicab which eventually yielded shabu because of a confidential report made by an informer. In *Mustang Lumber v. Court of Appeals*, 257 SCRA 430, the Supreme Court declared that the search of a moving vehicle is one of the doctrinally accepted exceptions to the rule that no search or seizure shall be made except by virtue of a warrant issued by a judge. The rationale for this exception, as explained by the Court in *Asuncion v. Court of Appeals*, G.R. No. 125959, February 1, 1999, is that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge — a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. It is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. In this case, the ruling in *Aminnudin* was held not applicable, because the police authorities had already identified the shabu dealer, and even if they did not know the time he would show up in the vicinity and were uncertain what type of vehicle he would use, there was probable cause inasmuch as the same police officers had a previous encounter with the petitioner who was then able to evade arrest.

iiia) However, in *Bagalihog v. Fernandez*, 198 SCRA 615, where respondent Roxas confiscated and impounded petitioner's motorcycle which was believed one of the vehicles used by the killers of Rep. Moises Espinosa, the Supreme Court ruled that the confiscation, without warrant, was unlawful. The constitutional provision protects not only those who appear to be innocent but also those who appear to be guilty but are nevertheless presumed

innocent until the contrary is proved. The necessity for the immediate seizure of the motorcycle had not been established; neither can the vehicle be detained on the ground that it is a prohibited article. In *Valmonte*, the rationale for allowing the "checkpoints" was to enable the NCRRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order for the benefit of the public. After all, as held in the resolution on the motion for reconsideration, the inspection is limited to a visual search, and neither the vehicle nor the occupants are subjected to a search.

f) Inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations. This is basically an exercise of the police power of the State, and would not require a search warrant. These are routine inspections which, however, must be conducted during reasonable hours.

g) Where prohibited articles are in plain view. Objects in the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure and may be presented as evidence. The "plain view" doctrine is usually applied where the police officer is not searching for evidence against the accused, but nonetheless inadvertently comes upon an incriminating object [*People v. Musa*, 217 SCRA 597].

i) Requisites. In *People v. Musa*, *supra*., reiterated in *People v. Aruta*, G.R. No. 120515, April 13, 1998; *People v. Doria*, G.R. No. 125299, January 22, 1999, and in *People v. Sarap*, G.R. No. 132165, March 26, 2003, the Supreme Court enumerated the elements of a valid seizure based on the "plain view" doctrine, as follows: (i) a prior valid intrusion based on the *vcHich* warrantless arrest in which the police are legally present in the pursuit of their official duties; (ii) the evidence was inadvertently discovered by the police who have the right to be where they are; (iii) the evidence must be immediately apparent; and (iv) "plain view" justified the seizure of the evidence without any further search.

ia) Thus, in *People v. Figueroa*, 248 SCRA 679, where, while serving a warrant of arrest, police officers searched the house and found a pistol, a magazine and seven rounds of ammunition, the seizure of the firearm and ammunition was held lawful, because the objects seized were in plain view of the officer who had the right to be in the place where he was. In *People v. Macalaba*, G.R. Nos. 146284-86, January 20, 2003, the evidence clearly shows that on the basis of intelligence information that a carnapped vehicle was driven by Abdul, who was also a suspect in drug pushing, the members of the CIDG of Laguna went around looking for the carnapped car. They spotted the suspected carnapped car which was indeed driven by Abdul. While Abdul

was fumbling about in his clutch bag for the registration papers of the car, the CIDG agents saw four transparent sachets of shabu. These sachets of shabu were, therefore, in “plain view” of the law enforcers.

ii) An object is in “plain view” if the object itself is plainly exposed to sight. Where the object seized is inside a closed package, the object is not in plain view and, therefore, cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized [*Caballes v. Court of Appeals*, G.R. No. 136292, January 15, 2002]. If the package is such that an experienced observer could infer from its appearance that it contains prohibited articles, then the article is deemed in plain view [*People v. Nuevas*, G.R. No. 170233, February 22, 2007].

iii) In *People v. Salanguit*, G.R No. 133254-55, April 19, 2001, the peace officers entered the dwelling armed with a search warrant for the seizure of shabu and drug paraphernalia. In the course of the search, they (presumably) found the shabu first, and then came upon an article wrapped in newspaper which turned out to be marijuana. On the issue of whether the marijuana may be validly seized, the Supreme Court said once the valid portion of the search warrant has been executed, the “plain view” doctrine can no longer provide any basis for admitting the other items subsequently found. (Note that the marijuana was wrapped in newspaper which was not transparent.)

iiia) In *Musa*, the Supreme Court said that the “plain view” doctrine may not be used to launch unbridled searches and indiscriminate seizures, nor to extend to a general exploratory search made solely to find evidence of defendant’s guilt. Thus, in *People v. Valdez*, G.R. No. 129296, September 25, 2000, it was held that although the marijuana plants were found in an unfenced lot, they were not apparent. A police team had to be dispatched to search for and uproot the prohibited flora. Accordingly, the plain view doctrine could not be validly invoked to justify the seizure. In *People v. Pasudag*, G.R. No. 128822, May 4, 2000, noting that the police authorities had ample time to secure a warrant, the seizure of the marijuana plants and the consequent arrest were held to be tainted with constitutional infirmity. The implied acquiescence of the appellant could not have been more than passive conformity given under intimidating circumstances. In *People v. Compacion*, G.R. No. 124442, July 20, 2001, where the peace officers had to enter the dwelling of the appellant in order to get to the backyard where they seized two marijuana plants, the Supreme Court said that the “plain view” doctrine cannot be invoked to justify the seizure. The four requisites enumerated in *Musa* had to be satisfied.

iv) The doctrine is not an exception to the warrant. It merely serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search as an incident to a lawful arrest or some other legitimate reason for being present, unconnected with a search directed against the accused. It is recognition of the fact that when executing police officers come across immediately incriminating evidence not covered by the warrant, they should not be required to close their eyes to it, regardless of whether it is evidence of the crime they are investigating or evidence of some other crime. It would be needless to require the police to obtain another warrant [*United Laboratories v. Isip*, G.R. No. 163858, June 28, 2005].

iva) The “immediately apparent” test does not require an unduly high degree of certainty as to the incriminating character of evidence. It requires merely that the seizure be presumptively reasonable assuming that there is probable cause to associate the property with criminal activity; that a nexus exists between the viewed object and criminal activity [*United Laboratories v. Isip, supra.*].

v) In *People v. Huang Zhan Hua*, 439 SCRA 350, police officers, in implementing a warrant which authorized the search of the residence of the accused for methamphetamine hydrochloride, also seized credit cards, a passbook, a passport, photographs, and other documents and papers. On the contention of the accused that the seizure of such items was illegal, the Supreme Court ruled that the seizure was legal because the articles were in plain view. Their seizure was authorized because of their close connection to the crime charged. The passport would show when and how often the accused had been in and out of the country; her credit cards and passbook would show how much money she had amassed and how she acquired them; the pictures would show her relationship to the co-accused.

vi) The doctrine allows the seizure of personality even without a warrant as long as the area of search is within the immediate control of the arrested person and the object of the seizure is open to the eye [*People v. de Guzman, G.R. Nos. 117952-53, February 14, 2001*].

h) Search and seizure under exigent and emergency circumstances. In *People v. de Gracia*, 233 SCRA 716, the raid of, and the consequent seizure of firearms and ammunition in, the Eurocar Sales Office at the height of the December 1989 coup d'état was held valid, considering the exigent and emergency situation obtaining. The military operatives had reasonable ground to believe that a crime was being committed, and they had no opportunity to apply for a search warrant from the courts because the latter were closed. Under such urgency and exigency, a search warrant could be validly dispensed with.

i) In *Guanzon v. de Villa*, 181 SCRA 623, the Supreme Court upheld as a valid exercise of the military powers of the President, the conduct of "areal target zoning" or "saturation drive/s". [NOTE: In this case, the validity of the search was not directly questioned; raised in issue were the alleged abuses committed by the military personnel who conducted the "saturation drives". In the absence of complainants and complaints against specific actors, no prohibition could be issued. However, the Court temporarily restrained the alleged banging of walls, kicking of doors, herding of half-naked men for examination of tattoo marks, the violation of residences, even if these are humble shanties of squatters, and the other alleged acts which are shocking to the conscience. The Supreme Court remanded the case to the trial court for reception of evidence on the alleged abuses.]

9. *Exclusionary Rule*: Evidence obtained in violation of Sec. 2, Art. III, shall be inadmissible for any purpose in any proceeding [Sec. 3 (2), Art. III], , because it is "the fruit of the poisoned tree."

a) Objections to the legality of the search warrant and to the admissibility of the evidence obtained thereby are deemed waived when not raised during the trial [*Demaisip v. Court of Appeals*, 193 SCRA 373]. In *People v. Diaz*, G.R. No. 110829, April 18, 1997, because of the failure of the accused to object to the admissibility of evidence obtained through an unlawful arrest and search, it was held that the accused were deemed to have waived their right, and the trial court did not err in admitting the evidence presented.

b) However, even if the accused were illegally arrested, such arrest does not invest eye-witness accounts with constitutional infirmity as "fruits of the poisonous tree"; thus, where the conviction could be secured on the strength of testimonial evidence given in open court, the illegality of the arrest cannot be invoked to reverse the conviction [*People v. Salazar*, G.R. No. 99355, August 11, 1997].

c) It does not necessarily follow that the property illegally seized will be returned immediately; it could remain in *custodia legis* [*Alih v. Castro, supra.*; *Roan v. Gonzales*, 145 SCRA 687]. Thus, in *People v. Estrada*, G.R. No. 124461, June 26, 2000, even as the search warrant was declared illegal and the medicines or drugs seized were shown to be genuine, their return was not ordered because the producer, manufacturer or seller did not have any permit or license to sell the same. But in *Tambasen v. People, supra.*, the money which was not indicated in the warrant, and thus, illegally seized, was ordered returned. For the retention of the money, the approval of the Court which issued the warrant is necessary [*People v. Gesmundo, supra.*]; in like manner, only the Court which issued the warrant may order its release.

d) In *Pita v. Court of Appeals*, *supra*., because the magazines subject of the search and seizure had already been destroyed, the Court declined to grant affirmative relief.

e) The property illegally seized may be used in evidence in the case filed against the officer responsible for the illegal seizure.

E. Privacy of Communications and Correspondence. rSec. 3. Art. III: “(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. ”]

1. *Inviolability. Exceptions:* (a) Lawful order of the court; or (b) When public safety or order requires otherwise, as may be provided by law.

2. The guarantee includes within the mantle of its protection tangible, as well as intangible, objects. Read R.A. 4200 [Anti-Wire-Tapping Act].

a) In *Ramirez v. Court of Appeals*, 248 SCRA 590, it was held that R.A. 4200 clearly and unequivocally makes it illegal for any person, not authorized by all the parties to any private communication, to secretly record such communications by means of a tape recorder. The law does not make any distinction. In *Gaanan v. Intermediate Appellate Court*, 145 SCRA 112, it was held that a telephone extension was not among the devices covered by this law.

3. The right may be invoked against the wife who went to the clinic of her husband and there took documents consisting of private communications between her husband and his alleged paramour [*Zulueta v. Court of Appeals* 253 SCRA 699].

”

4. However, in *Waterous Drug Corporation v. NLRC*, G.R. No. 113271, October 16, 1997, the Supreme Court said that the Bill of Rights does not protect citizens from unreasonable searches and seizures made by private individuals. In this case, an officer of the petitioner corporation opened an envelope addressed to the private respondent and found therein a check evidencing an overprice in the purchase of medicine. Despite the lack of consent on the part of the private respondent, the check was deemed admissible in evidence.⁵

5. *Exclusionary Rule.*

a) In *In Re: Wenceslao Laureta*, 148 SCRA 382, letters addressed by a lawyer (of one of the parties to a case) addressed to individual Justices of the Supreme Court in connection with the performance of their judicial functions, become part of the judicial record and are a matter of concern for the entire Court — and thus, are not covered by the constitutional guarantee. In *People v. Albofera*, 152 SCRA 123, a letter written by the accused to a witness which was produced by the witness during the trial is admissible in evidence; it was not the result of an unlawful search, nor through an unwarranted intrusion or invasion into the privacy of the accused. It was produced by the recipient of the letter who identified the same. Besides, there is nothing self-incriminatory in the letter.

F. Freedom of Expression. fSec. 4. Art. III: “*No law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.*”]

1. Scope. Any and all modes of expression are embraced in the guaranty. Reinforced by Sec. 18 (1), Art. III.

2. Aspects:

a) Freedom from censorship or prior restraint.

i) There need not be total suppression; even restriction of circulation constitutes censorship [*Grosjean v. American Press Co.*, 297 U.S. 233]. In *Burgos v. Chief of Staff*, *supra*., the search, padlocking and sealing of the offices of Metropolitan Mail and We Forum by military authorities, resulting in the discontinuance of publication of the newspapers, was held to be prior restraint. See also: *Corro v. Using*, *supra*. In *Eastern Broadcasting v. Dans*, 137 SCRA 647, the arbitrary closure of radio station DYRE was held violative of the freedom of expression. In *Mutuc v. Comelec*, 36 SCRA, the Comelec prohibition against the use of taped jingles in the mobile units used in the campaign was held to be unconstitutional, as it was in the nature of censorship. In *Sanidad v. Comelec*, 181 SCRA 529, the Court annulled the Comelec prohibition against radio commentators or newspaper columnists from commenting on the issues involved in the scheduled plebiscite on the organic law creating the Cordillera Autonomous Region as an unconstitutional restraint on freedom of expression.

ia) In *Chavez v. Secretary Gonzalez*, G.R. No. 168338, February 15, 2008, the Supreme Court held that acts of the Secretary of Justice and the National Telecommunications Commission in warning

television stations against playing the “Garci tapes” under pain of revocation of their licenses, were content-based restrictions, and should be subjected to the “clear and present danger test”. They focused only on one subject — a specific content — the alleged taped conversations between the President and a CQmelec official; they did not merely provide regulations as to time, place or manner of the dissemination of speech or expression. Respondents’ evidence falls short of satisfying the clear and present danger test.

ii) But in *Gonzales v. Comelec*, 27 SCRA 835, the Court upheld the validity of the law which prohibited, except during the prescribed election period, the making of speeches, announcements or commentaries for or against the election of any party or candidate for public office. In *National Press Club v. Comelec*, 207 SCRA 1, the Supreme Court upheld the validity of Sec. 11 (b), RA 6646, which prohibited any person making use of the media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Comelec. This was held to be within the constitutional power of the Comelec to supervise the enjoyment or utilization of franchises for the operation of media of communication and information, for the purpose of ensuring equal opportunity, time and space and the “right to reply”, as well as uniform and reasonable rates of charges for the use of such media facilities. This ruling was re-examined in *Osmena v. Comelec*, G.R. No. 132231, March 31, 1998, where the Supreme Court reaffirmed the validity of Sec. 11 (b) of R.A. 6646, as a legitimate exercise of the police power of the State to regulate media of communication and information for the purpose of ensuring equal opportunity, time and space for political campaigns. The regulation is unrelated to the suppression of speech, as any restriction on freedom of expression occasioned thereby is only incidental and no more than is necessary to achieve the purpose of promoting equality. Consistent with this policy are Secs. 90 and 92, B.P. 881, on the right of the Comelec to procure newspaper space and broadcast time to be allocated equally among the candidates. *Osmena v. Comelec* does not violate the principle laid down in *Philippine Press Institute v. Comelec*, 244 SCRA 272, because in the latter, the Supreme Court simply said that Comelec cannot procure print space without paying just compensation therefor.

iii) In the same vein, in *Telecommunications and Broadcast Attorneys of the Philippines v. Comelec*, G.R. No. 132922, April 21, 1998, the Supreme Court ruled that Sec. 92, B.R 881, is constitutional, even as it provides that air time may be procured by the Comelec free of charge, the same being an exercise of the plenary police power of the State to promote the general welfare. The Court brushed aside the arguments of petitioners, in this wise: [a] all broadcasting, whether by radio or television, is licensed by the Government, and the franchise issued to a broadcast station is always

subject to amendment, alteration or repeal by Congress when the common good requires, and there is no better measure for the common good than one for free airtime for the benefit not only of the candidates but even more of the public, particularly the voters, so that they will be informed of the issues in an election, for after all, it is the right of the viewers and listeners, not of the broadcasters, that is paramount; [b] the Comelec does not take over the operation of radio and television stations, but only the allocation of airtime to the candidates, to ensure equal opportunity, time and the right to reply, as mandated by the Constitution; and [c] there are substantial distinctions in the characteristics of the broadcast media from those of the print media which justify the different treatment accorded to each for purposes of free speech, viz: the physical limitations of the broadcast spectrum, the uniquely pervasive presence of the broadcast media in the lives of all Filipinos, and the earlier ruling that the freedom of television and radio broadcasting is somewhat lesser than the freedom accorded to the print media.

iv) *InAdiong v. Comelec*, 207 SCRA 712, the Comelec's resolution prohibiting the posting of decals and stickers in mobile units like cars and other moving vehicles was declared unconstitutional for infringement of freedom of expression. Furthermore, the restriction was so broad as to include even the citizen's privately owned vehicles, equivalent to deprivation of property without due process of law. Besides, the constitutional objective of giving the rich and poor candidates' equal opportunity to inform the electorate is not violated by the posting of decals and stickers on cars and other vehicles.

v) In *Tolentino v. Secretary of Finance*, *supra*., (Resolution on the Motion for Reconsideration, October 30, 1995), on the contention that R.A. 7716 discriminates against the press because it removed the exemption still granted to others, the Court declared that since the law granted the press a privilege, the law could take back the privilege any time without offense to the Constitution. By granting an exemption, the State does not forever waive the exercise of its sovereign prerogative.

vi) Movie Censorship. In an old U.S. case, it was observed that movies, compared to other media of expression, have a greater capacity for evil and must, therefore, be subjected to a greater degree of regulation. But the power of the Board of Review for Motion Pictures and Television (BRMPT) [now the Movie and Television Review and Classification Board (MTR'CB)] can be exercised only for purposes of "classification", not censorship. In *Gonzales v. Katigbak*, 137 SCRA 717, where the petitioner questioned the classification of the movie as "For Adults Only", the petition was dismissed because the Board did not commit grave abuse of discretion. In *Lagunzad v. Sotto Vda.*

de Gonzales, 92 SCRA 476, the Court granted the petition to restrain the public exhibition of the movie “Moises Padilla Story”, because it contained fictionalized embellishments. In *Ayer Productions v. Judge Capulong*, 160 SCRA 861, the tribunal upheld the primacy of freedom of expression over Enrile’s “right to privacy”, because Enrile was a “public figure”, and a public figure’s right to privacy is narrower than that of an ordinary citizen. Besides, the movie “A Dangerous Life” would not have been historically faithful without including therein the participation of Enrile in the EDS A Revolution. Thus, the intrusion into Enrile’s right to privacy is not unreasonable. In *Iglesia ni Cristo v. Court of Appeals*, 259 SCRA 529, even as the Supreme Court upheld the authority of the Board of Review for Motion Pictures and Television (BRMPT) to review the petitioner’s television program, it held that the Board acted with grave abuse of discretion when it gave an “X-rating” to the TV program on the ground of “attacks against another religion”. Such a classification can be justified only if there is a showing that the television program would create a clear and present danger of an evil which the State has the right to prevent. The same rule was applied in *Viva Productions v. Court of Appeals and Hubert Webb*, G.R. No. 123881, March 13, 1997, where the Supreme Court invalidated the orders issued by the lower courts restraining the public exhibition of the movie, “The Jessica Alfaro Story”.

via) In *Movie and Television Review and Classification Board (MTRCB) v. ABS-CBN Broadcasting Corporation*, G.R. No. 155282, January 17, 2005, the Court upheld MTRCB’s power of revidw over the TV program “The Inside Story”, citing Sec.7 of PD 1986 which exempts only television programs imprinted or exhibited by the Philippine Government and/or its departments and agencies, and newsreels. “The Inside Story”, a public affairs program described as a variety of news treatment, cannot be considered a newsreel.

vii) In *ABS-CBN Broadcasting Corporation v. Comelec*, G.R. No. 133486, January 28, 2000, the Supreme Court declared that there is no law prohibiting the holding and the reporting of exit polls. An exit poll is a species of electoral survey conducted by qualified individuals or group of individuals for the purpose of determining the probable result of an election by confidentially asking randomly selected voters whom they have voted for immediately after they have officially cast their ballots. The results of the survey are announced to the public, usually through the mass media, to give an advance overview of how, in the opinion of the polling individuals or organizations, the electorate voted. The freedom of speech and of the press should all the more be upheld when what is sought to be curtailed is the dissemination of information meant to add meaning to the equally vital right of suffrage.

viii) In *Social Weather Stations v. Comelec*, G.R. No. 147571, May 5, 2001, Sec. 5.4 of RA 9006 which provides that “surveys affecting national candidates shall not be published 15 days before an election and surveys affecting local candidates shall not be published 7 days before an election”, was held to be an unconstitutional abridgment of freedom of expression for laying a prior restraint on the freedom. While in *National Press Club v. Comelec, supra.*, the Court sustained the ban on media political advertisements, the same was made on the premise that the grant of power to the Comelec (to regulate the enjoyment or utilization of franchises for the operation of media of communications) is limited to ensuring “equal opportunity, time, space and the right to reply”.

viiia) In the same case, the Supreme Court said that the test for the validity of Sec. 5.4, RA9006, is the *O'Brien Test* [U.S. v. O'Brien, 391 US 365], where the US Supreme Court held that a government regulation is valid if [1] it is within the constitutional power of government; [2] it furthers an important or substantial governmental interest; [3] the governmental interest is unrelated to the suppression of free expression; and [4] the incidental restriction on the freedom is no greater than is essential to the furtherance of that interest. By prohibiting the publication of election survey results because of the possibility that such publications might undermine the integrity of the election, it actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by news columnists, radio and TV commentators, armchair theorists, and other opinion makers. In effect, it shows bias for a particular subject matter by preferring personal opinion to statistical results. It constitutes a total suppression of a category of speech and is not made less so because it is only for a limited period. The section also fails to meet criterion 4 of the test. The section aims at the prevention of last- minute pressure on voters, the creation of bandwagon effect, “junking” of weak or losing candidates, and resort to the form of election cheating known as “dagdag-bawas”. These cannot be attained at the sacrifice of the fundamental right of expression, when such aim can be more narrowly pursued by punishing unlawful acts rather than speech, just because of the apprehension that speech creates the danger of such evil acts. Thus, the section is invalid because [1] it imposes a prior restraint on freedom of expression; [2] it is a direct and total suppression of a category of expression even though such suppression is only for a limited period; and [3] the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression.

viiib) In one concurring opinion in the same case, the offending section is deemed an invalid exercise of the police power, inasmuch as the means used to regulate free expression are not reasonably necessary for

the accomplishment of the purpose, and worse, it is unduly oppressive upon survey organizations which have been singled out for suppression on the mere apprehension that their survey results will lead to misinformation, junking or contrived bandwagon effect.

viiic) In another concurring opinion, the section is stigmatized because of the *Overbreadth Doctrine*, which prohibits government from achieving its purpose by “means that sweep unnecessarily broadly, reaching constitutionally protected as well as unprotected activity”. The essence of “overbreadth” is that the government has gone too far; its legitimate interest can be satisfied without reaching so broadly into the area of “protected freedom”.

viic) In *Chavez v. Commission on Elections*, 437 SCRA 415, where the issue of constitutionality for being overbroad was raised against the Comelec resolution requiring the removal of all advertisements showing the image or mentioning the name of a person who subsequently became a candidate, the Supreme Court said that a statute or regulation is void for overbreadth when it offends the constitutional principle that a government purpose to control or prevent activities constitutionally subject to State regulation may not be achieved by means that sweep unnecessarily broadly and thereby invade the area of protected freedoms. The challenged resolution is limited in its operation as to time and scope. It only disallows the continued display of the advertisements after a person has filed a certificate of candidacy and before the start of the campaign period. There is no blanket prohibition of the use of advertisements. Thus, the resolution is not constitutionally infirm.

b) Freedom from subsequent punishment. Without this assurance, the individual would hesitate to speak for fear that he might be held to account for his speech, or that he might be provoking the vengeance of the officials he may have criticized. However, this freedom is not absolute, and may be properly regulated in the interest of the public. Accordingly, the State may validly impose penal and/or administrative sanctions, such as in the following:

i) *Libel*. A public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead [Art. 353, Revised Penal Code]. Oral defamation is called slander [Art. 358, Revised Penal Code].

ia) Every defamatory imputation is presumed to be malicious [*Alonzo v. Court of Appeals*, G.R. No. 110088, February 1, 1995], but this presumption of malice does not exist in the following instances: (1) A private

communication made by any person to another in the performance of any legal, moral or social duty; and (2) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of a confidential nature, or of any statement, report or speech delivered in said proceedings, or of any act performed by public officers in the exercise of their functions [Art. 353, Revised Penal Code],

ib) In *Baguio Midland Courier v. Court of Appeals*, G.R. No. 107566, November 25, 2004, it was reiterated that the public has the right to be informed on the mental, moral, and physical fitness of candidates for public office. However, the rule applies only to *fair comment* on matters of public interest, fair comment being that which is true, or if false, expresses the real opinion of the author based upon reasonable degree of care and on reasonable grounds. The principle does not grant an absolute license to authors or writers to destroy the persons of candidates for public office by exposing the latter to public contempt or ridicule by providing the general public with publications tainted with express or actual malice. In the latter case, the remedy of the person allegedly libelled is to show proof that an article was written with the author's knowledge that it was false, or with reckless disregard of whether it was false or not.

ii) *Obscenity*. There is no perfect definition of "obscenity", but the latest word is that of *Miller v. California*, which established basic guidelines, to wit: (1) whether the average person, applying contemporary standards, would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value. No one will be subject to prosecution for the sale or exposure of obscene materials- unless these materials depict or describe patently offensive "hard core" sexual conduct. What remains clear is that obscenity is an issue proper for judicial determination and should be treated on a case-to-case basis, and on the judge's sound discretion [*Fernando v. Court of Appeals*, G.R. No. 159751, December 6, 2006].

iia) In *U.S. v. Kottinger*, 45 Phil 352, the Supreme Court acquitted the accused who was charged of having offered for sale pictures of half-clad members of non-Christian tribes, holding that he had only presented them in their native attire. In *People v. Go Pin*, the accused was convicted for exhibiting nude paintings and pictures, notwithstanding his claim that he had done so in the interest of art. The Supreme Court, noting that he had charged admission fees to the exhibition, held that his purpose was commercial, not merely artistic. In *Pita v. Court of Appeals*, *supra*., the Supreme Court declared that the determination of what is obscene is a judicial function.

iii) *Criticism of official conduct.* The leading case of *U.S. v. Bustos*, 37 Phil 731, is authority for the rule that the individual is given the widest latitude in criticism of official conduct. The Supreme Court compared criticism to a “scalpel that relieves the abscesses of officialdom”.

iiia) However, consider the following: In *People v. Alarcon*, 69 Phil 265, it was held that newspaper publications tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding constitutes criminal contempt which is summarily punishable by the courts. In *In Re: Atty. Emiliano P. Jurado, Jr.*, the Court said that a publication that tends to impede, embarrass or obstruct the court and constitutes a clear and present danger to the administration of justice is not protected by the guarantee of press freedom and is punishable by contempt. It is not necessary to show that the publication actually obstructs the administration of justice; it is enough that it tends to do so. In *In Re: Sotto*, 46 O.G. 2570, a senator was punished for contempt for having attacked a decision of the Supreme Court which he called incompetent and narrow-minded, and announcing that he would file a bill for its reorganization. In *In Re: Column of Ramon Tulfo*, Tulfo’s “Sangkatutak na Bobo” column (on the SC decision in *Valmonte v. de Villa, supra.*) was held contumacious. Freedom of the press is subordinate to the decision, authority, integrity and independence of the judiciary and the proper administration of justice. While there is no law to restrain or punish the freest expression of disapprobation of what is done in or by the courts, free expression must not be used as a vehicle to satisfy one’s irrational obsession to demean, ridicule, degrade and even destroy the courts and their members. In *In Re: Laureta, supra.*, a lawyer was held in contempt and suspended from the practice of law for writing individual letters to the members of the SC division that decided a case against his client, arrogantly questioning their decision and threatening an expose if the same was not reconsidered in his favor. In *Zaldivar v. Sandiganbayan*, 170 SCRA 1, a member of the Bar who imputed charges of improper influence, corruption and other misdeeds to members of the Supreme Court, was suspended from the practice of law, as “neither the right of free speech nor the right to engage in political activities can be so construed or extended as to permit any such liberties to a member of the bar”..In *Nestle Philippines v. Sanchez*, 154 SCRA 542, required to show cause why they should not be punished for contempt, the workers involved in a labor dispute who had mounted a 24-hour picket along Padre Faura, pitched tents thereon, blocked traffic, and maintained a continuous harangue pleading their case, extended apologies to the court and desisted, promising they would not take similar action again. In *In Re Emil Jurado, Ex Rel: PLDT*, 243 SCRA 299, the Court said that Jurado is being called to account as a journalist who has misused and abused press freedom to put the judiciary in clear and present danger of disrepute and of public odium and opprobrium, to the detriment of

the administration of justice. That he is a member of the Bar has nothing to do with the imposition of these sanctions, although it may aggravate liability.

iiib) In *Estrada and Pwersa ng Masang Pilipino v. Evardone, G.R. No. 159751, December 6, 2007*, where petitioners imputed contumacious statements to respondent for referring to rumors that Chief Justice Panganiban has intentions of running for the Senate, the Supreme Court found as sufficient and acceptable the defense of respondent that he had no intention to undermine the integrity of the Court, and that nothing in his statements insinuate or suggest that the Court was susceptible to influence. Nothing in his statements can be considered as a malicious attack on the proceedings of the Court as to cast doubt on its integrity. His remarks about the Chief Justice were mere speculations and personal observations based on a precedent not derogatory or contumacious enough to warrant sanction from the Court.

iv) *Right of students to free speech in school premises not absolute.* This right must always be applied in light of the special characteristics of the school environment. While the Campus Journalism Act provides that a student shall not be expelled or suspended solely on the basis of articles he or she has written, the same should not infringe on the school's right to discipline its students. Thus, this section of the Campus Journalism Act should be read to mean that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such article materially disrupts class work or involves substantial disorder or invasion of rights of others [*Miriam College Foundation v. Court of Appeals, G.R. No. 127930, December 15, 2000*],

3. Tests of valid governmental interference.

a) Clear and Present Danger Rule: Whether the words are used in such circumstances and of such a nature as to create a clear and present danger that they will bring about the substantive evils that the State has the right to prevent [*Schenck v. U.S., 249 U.S. 97*]. "The substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished".

i)

i) The rule is that the danger created must not only be clear and present but also traceable to the ideas expressed. In *Gonzales v. Comelec, 27 SCRA 835*, the Court said that the term "clear" seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned; while "present" refers to the time element, identified with imminent and immediate danger. The danger must not only be probable, but very likely inevitable. In *Zaldivar v. Sandiganbayan*,

argument of Tanodbayan Raul M. Gonzalez that it was error for the Court to apply the “visible tendency” rule rather than the “clear and present danger” rule in disciplinary and contempt charges, the Supreme Court said that it did not purport to announce a new doctrine of “visible tendency”; it was merely paraphrasing Sec. 3 (d), Rule 71, Rules of Court. Under either the “clear and present danger rule” or the “balancing of interest” test, the statements of Gonzalez transcended the limits of free speech. The “substantive evil” consists not only of the obstruction of a free and fair hearing of a particular case but also the broader evil of the degradation of the judicial system of a country and the destruction of the standards of professional conduct required from members of the bar and officers of the court. In *Iglesia ni Cristo v. Court of Appeals, supra.*, the Court held that the “X-rating” would have been justified only if there was a clear and present danger of an evil which the State has the right to prevent. In *Viva Productions v. Court of Appeals and Hubert Webb, G.R. No. 123881, March 13, 1997*, the Supreme Court held that action of RTC Paranaque and RTC Makati in restraining the exhibition of the movie, “The Jessica Alfaro Story”, violated the petitioner’s right to free expression. The Court noted that the lower court specifically failed to lay down any factual basis constituting a clear and present danger that would justify prior restraint.

ii) As applied to assembly and petition, the Supreme Court declared in *J.B.L. Reyes v. Bagatsing, 125 SCRA 553*, that the denial of a permit (to hold a public rally) was invalid as there was no showing of the probability of a clear and present danger of an evil that might arise as a result of the meeting. The burden of proving such eventuality rests on the Mayor.

b) Dangerous Tendency Rule. As explained in *Cabansag v. Fernandez, 102 Phil 152*, if the words uttered create a dangerous tendency of an evil which the State has the right to prevent, then such words are punishable. It is sufficient if the natural tendency and the probable effect of the utterance were to bring about the substantive evil that the legislative body seeks to prevent. See: *People v. Perez, 45 Phil 599*.

c) Balancing of Interests Test. “When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, or partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented” [*American Communications Association v. Douds, 339 U.S. 282*]. In *Zaldivar v. Sandiganbayan, slipra.*, the Supreme Court said that the “clear and present danger rule” is not the only test which has been recognized and applied by the courts. Another criterion for permissible limitation on freedoms of speech and of the press is the “balancing of interests test”, which requires a court to take conscious and detailed consideration

of the interplay of interests observable in a given situation. See also *Ayer Productions v. Capulong, supra*.

4. *Assembly and Petition.* The right to assemble is not subject to prior restraint. It may not be conditioned upon the prior issuance of a permit or authorization from government authorities. However, the right must be exercised in such a way as will not prejudice the public welfare, as held in *De la Cruz v. Court of Appeals, G.R. Nos. 126183 & 129221, March 25, 1999*. In this case, the Supreme Court said that by staging their mass protest on regular school days, abandoning their classes and refusing to go back even after they were ordered to do so, the teachers committed acts prejudicial to the best interests of the service.

a) If the assembly is to be held in a public place, a permit for the use of such place, and not for the assembly itself, may be validly required. But the power of local officials in this regard is merely one of regulation, not prohibition [*Primicias v. Fugoso, 80 Phil 71; Reyes v. Bagatsing, supra*].

i) Thus, in B.P. 880 [Public Assembly Act of 1985], a permit to hold a public assembly shall not be necessary where the meeting is to be held in a private place, in the campus of a government-owned or -operated educational institution, or in a freedom park. Where a permit is required, the written application shall be filed with the mayor's office at least 5 days before the scheduled meeting and shall be acted upon within two days, otherwise the permit shall be deemed granted. Denial of the permit may be justified only upon clear and convincing evidence that the public assembly will create a clear and present danger to public order, safety, convenience, morals or health. Action on the application shall be communicated within 24 hours to the applicant, who may appeal the same to the appropriate court. Decision must be reached within 24 hours. The law permits law enforcement agencies to detail a contingent under a responsible officer at least 100 meters away from the assembly in case it becomes necessary to maintain order. See *Ruiz v. Gordon, 126 SCRA 233*.

ii) *Bayan v. Ermita, G.R. No. 169838, April 23, 2006*, upheld the constitutionality of B.P. 880. The Court said that it is not an absolute ban on public assemblies but a restriction that simply regulates the time, place and manner of the assemblies. (1) In *Osmena v. Comelec*, the Court referred to it as a "content-neutral" regulation of the time, place and manner of holding public assemblies. The reference to "lawful cause" does not make it "content-based", because assemblies really have to be for lawful causes; otherwise, they would not be "peaceable" and entitled to protection. Neither are the words "opinion", "protesting" and "influencing" in the definition of public assembly "content-

based", since they can refer to any subject. Maximum tolerance is for the protection and benefit of all rallyists and is independent of the content of the expressions in the rally. (2) The permit can only be denied on the ground of clear and present danger" to public order, public safety, public convenience, public morals or public health. This is a a recognized exception to the exercise of the right even under the Universal Declaration of Human Rights. (3) The law is not *overbroad*. It regulates the exercise of the right to peaceful assembly and petition only to the extent needed to avoid a clear and present danger of the substantive evils Congress has the right to prevent. (4) There is no *prior restraint*, since the content of the speech is not relevant to the regulation. It does not curtail or unduly restrict freedoms; it merely regulates the use of public places as to the time, place and manner of assemblies. (5) The delegation to the Mayors of the power to issue rally "permits" is valid because it is subject to the constitutionally sound "clear and present danger" standard.

b) In *Subayco v. Sandiganbayan*, 260 SCRA 798, regarding the Escalante massacre, the Court bewailed the use of bullets to break up the assembly of people petitioning for redress of grievances. In this case, the Court declared: "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feelings are always brought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution were permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous uprising against the authorities, then the right to assemble and petition the government for redress of grievances would become a delusion and a snare, and the attempt to exercise it on the most righteous occasions and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment.

c) However, in *Bangalisan v. Court of Appeals*, G.R. No. 124678, July 23, 1997, the suspension/dismissal of the public school teachers, who staged a strike to dramatize their grievances, was held valid. They were not being penalized for their exercise of the right to peaceful assembly and petition, but because of their successive, unauthorized and unilateral absences which produced adverse effects upon their students. This rule is reiterated in *Jacinto v. Court of Appeals*, G.R. No. 124540, November 14, 1997; in *De la Cruz v. Court of Appeals*, G.R. Nos. 126183 & 129221, March 25, 1999 and in *Acosta v. Court of Appeals*, G.R. No. 132088, June 28
2000.

i) Likewise, in *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*, G.R. No. 170132, December 6, 2006, the Court reiterated the principle that employees in the public service may not engage in strikes or in concerted and unauthorized stoppage of work; that the right of government employees to organize is limited to the formation of unions or associations, without including the right to strike. It may be, as the appellate court urged, that the freedom of expression and assembly and the right to petition the government for redress of grievances stand on a level higher than economic and other liberties. However, the appellate court's position is contrary to what Sec. 4, Art. III (Constitution), in relation to Sec. 5 of Civil Service Commission Resolution No. 021315, provides. Thus, any suggestion that these rights include the right on the part of government personnel to strike ought to be, as it has been, thrashed.

d) As applied to student rallies and demonstrations, in *Malabanan v. Ramento*, 129 SCRA 359, the Supreme Court emphasized that the students did not shed their constitutional rights to free speech at the schoolhouse gate, and permitted the students to re-enroll and finish their studies. In *Villarv. TIP*, 135 SCRA 706, while the Court upheld the academic freedom of institutions of higher learning, which includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students, it was held that this right cannot be utilized to discriminate against those who exercise their constitutional rights to peaceful assembly and free speech. In *Non v. Dames*, 185 SCRA 523, the Supreme Court abandoned its earlier ruling in *Alcuaz v. PSBA*, 165 SCRA 7, (that enrolment of a student is a semester-to-semester contract and the school may not be compelled to renew the contract), upholding the primacy of freedom of expression, because the students do not shed their constitutionally protected rights at the school gate.

e) In *PBM Employees Association v. PBM Steel Mills*, *supra*., the Court ruled that the right to free assembly and petition prevails over economic rights. However, in *De la Cruz v. Court of Appeals*, *supra*., the Supreme Court said that the education of the youth occupies a preferred position over — or, at the very least, equated with — the freedom of assembly and petition.

f) In *David v. Macapagal-Arroyo*, *supra*., the Supreme Court said that on the basis of the relevant and uncontested facts, it is clear that the (1) warrantless arrest of petitioners David and Llamas; (2) the dispersal of the rallies and warrantless arrest of the KMU and NAFLU members; (3) the imposition of standards on media or any prior restraint on the press; and (4) the warrantless search of the *Daily Tribune* offices and the whimsical seizure of some articles for publications and other materials, are not authorized by the Constitution, the law and jurisprudence; not even by the valid provisions of PP 1017 and G.O. No. 5.

G. Freedom of Religion. fSec. 5. Art. III: “*No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights. ”]*

1. *Two guarantees contained in Sec. 5:* (a) Non-establishment Clause; and (b) Freedom of religious profession and worship.

2. *Non-establishment clause.* This reinforces Sec. 6, Art. II, on the separation of Church and State. Recall other constitutional provisions which support the non-establishment clause, namely: Sec. 2(5), Art. IX-C [a religious sect or denomination cannot be registered as a political party]; Sec. 5(2), Art. VI [no sectoral representative from the religious sector]; and Sec. 29 (2), Art. VI [prohibition against the use of public money or property for the benefit of any religion, or of any priest, minister, or ecclesiastic]. See *Aglipay v. Ruiz*, 64 Phil 201; *Garces v. Estenzo*, 104 SCRA 510.

a) Exceptions: (i) Sec. 28 (3), Art. VI [exemption from taxation of properties actually, directly and exclusively used for religious purposes]; see *Bishop of Nueva Segovia v. Provincial Board*, 51 Phil 352; (ii) Sec. 4 (2), Art. XIV [citizenship requirement of ownership of educational institutions, except those established by religious groups and mission boards]; (iii) Sec. 3 (3), Art. XIV [optional religious instruction in public elementary and high schools: at the option expressed in writing by the parents or guardians, religious instruction taught within regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government]; (iv) Sec. 29 (2), Art. VI [appropriation allowed where the minister or ecclesiastic is employed in the armed forces, in a penal institution, or in a government-owned orphanage or leprosarium].

b) Scope. In *Everson v. Board of Education*, 30 U.S. 1, the U.S. Supreme Court said that the non-establishment clause means that the State cannot set up a church, nor pass laws which aid one religion, aid alt religion, or prefer one religion over another, nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in, any religion, etc. In *Engel v. Vitale*, 370 U.S. 421, known as the “School Prayer Case”, the recitation by the students in public schools in New York of a prayer composed by the Board of Regents was held unconstitutional.ⁱ⁾

i) In line with the constitutional principle of equal treatment of all religions, the State recognizes the validity of marriages performed in

conformity with the rites of the Mohammedan religion [*Adong v. Cheong Seng Gee*, 43 Phil 43]. As to the expression "non-Christian" used in some restrictive laws applicable to "non-Christian" tribes, the Supreme Court, conscious of the implication of religious discrimination in the term, has given the interpretation that it does not refer to religious belief, but to degree of civilization. See *People v. Cayat, supra.*; *Rubi v. Provincial Board of Mindoro, supra..*

ii) Laws, such as Art. 133, Revised Penal Code, which punish blasphemy or acts notoriously offensive to the feelings of the faithful in a place devoted to religious worship or during the celebration of a religious ceremony, do not violate the freedom of religion. -

iii) In *Islamic Da'wah. Council of the Philippines v. Office of the Executive Secretary*, G.R. No. 153888, July 9, 2003, the Supreme Court declared that freedom of religion is accorded preferred status by the framers of the fundamental law, well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good". Without doubt, classifying food products as *halal* is a religious function because the standards used are drawn from the Qur'an and Islamic beliefs. By giving the Office of Muslim Affairs (OMA) the exclusive power to classify food products as *halal*, EO 46 encroached on the religious freedom of Muslim organizations like herein petitioner to interpret for Filipino Muslims what food products are fit for Muslim consumption. Also by arrogating to itself the task of issuing *halal* certifications, the State has, in effect, forced Muslims to accept its own interpretation of the Qur'an and Sunnah on *halal* food.

iv) Intramural religious dispute. In *Gonzales v. Archbishop of Manila*, 51 Phil 420, the Supreme Court said that where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more. In *Fonacier v. Court of Appeals*, 96 Phil 417, where the dispute involves the property rights of the religious group, or the relations of the members where property rights are involved, the civil courts may assume jurisdiction.

iva) In *Austria v. NLRC and Central Philippine Union Mission Corporation of the Seventh Day Adventists*, G.R. No. 124382, August 16, 1999, concerning the dismissal of petitioner, a minister, for misappropriation of denominational funds, willful breach of trust, serious misconduct and gross and habitual neglect of duties, the Supreme Court had occasion to define an *ecclesiastical affair* as "one that concerns doctrine, creed or form of worship of the church, or the adoption and enforcement within a religious association

of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership" [Black's Law Dictionary, 5th ed. (1979), p. 460]. Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relates to matters of faith, religious doctrines, worship and governance of the congregation. Examples of these affairs in which the State cannot meddle are proceedings for excommunication, ordination of religious ministers, administration of sacraments, and other activities to which is attached religious significance. In this case, what is involved is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship or doctrine of the church.

ivb) In *Taruc v. Bishop Porfirio de la Cruz, G.R. No. 144801, March 10, 2005*, the Supreme Court declared that the expulsion/ excommunication of members of a religious institution/organization is a matter best left to the discretion of the officials, and the laws and canons of such institution/organization. It is not for the Court to exercise control over church authorities in the performance of their discretionary and official functions. Rather, it is for the members of religious institutions/organizations to conform to just church regulations.

3. Free Exercise Clause.

a) Aspects of freedom of religious profession and worship: ij

Right to believe, which is absolute.

ii) *Right to act according to one's beliefs*, which is subject to regulation. In *German v. Barangay*, 135 SCRA 514, the Supreme Court found that the petitioners were not sincere in their profession of religious liberty * and were using it merely to express their opposition to the government. But see the dissenting opinion of Justice Teehankee: religious freedom may be regulated only upon the application of the "clear and present danger rule". In *Ebralinag v. Division Superintendent of Schools of Cebu*, 219 SCRA 256, the Supreme Court reversed *Gerona v. Secretary of Education*, 106 Phil 2, and the *Balbuna* decision, and upheld the right of the petitioners to refuse to salute the Philippine flag on account of their religious scruples. In *People v. Zosa, supra*, the invocation of religious scruples in order to avoid military service was brushed aside by the Supreme Court. In *Victoriano v. Elizalde Rope Workers Union*, 59 SCRA 54, the Supreme Court upheld the validity of R.A. 3350, exempting members of a religious sect from being compelled to join a labor union. In *Pamil v. Teleron*, 86 SCRA 413, a divided Supreme

Court upheld the constitutionality of Sec. 2175 of the Revised Administrative Code disqualifying ecclesiastics from holding elective or appointive municipal offices. In *American Bible Society v. City of Manila*, 101 Phil 386, the Supreme Court recognized the “right to proselytize” as part of religious freedom, and invalidated the application of a City Ordinance imposing license fees on the sale of merchandise to the sale of religious tracts. Citing this case, the Supreme Court said in *Iglesia ni Cristo v. Court of Appeals*, *supra*., that the constitutional guarantee of free exercise of religious profession and worship carries with it the right to disseminate religious information, and any restraint of such right can be justified only on the ground that there is a clear and present danger of an evil which the State has the right to prevent.

iiia) *The compelling State interest test*. In *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, respondent was administratively charged with immorality for living with a married man not her husband. As members of the Jehovah’s Witnesses and the Watch Tower and Bible Tract Society, their conjugal arrangement was in conformity with their religious beliefs. In fact, after ten years of living together, they executed a “Declaration of Pledging Faithfulness” before their religious elders. Recognizing the religious nature of the Filipinos and the elevating influence of religion in society, the constitution’s religion clauses prescribe not a strict but a benevolent neutrality. Benevolent neutrality .recognizes that government must pursue its secular goals and interests, but at the same time, strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interest, in applying the test, the first inquiry is whether respondent's right to religious freedom has been burdened. There is no doubt that between keeping her employment and abandoning her religious belief and practice and family on the one hand, and giving up her employment and keeping her religious belief and practice and family on the other, puts a burden on her free exercise of religion. The second step is to ascertain respondent's sincerity in her religious belief. Respondent appears to be sincere in her religious belief and practice, and is not merely using the “Declaration of Pledging Faithfulness” to avoid punishment for immorality. This being a case of first impression, the parties were not aware of the burden of proof they should discharge in the Court’s use of the “compelling state interest” test. It is apparent that the state interest it upholds is the preservation of the integrity of the judiciary by maintaining among its ranks a high standard of morality and decency. However, there is nothing in the memorandum to the Court that demonstrates how the interest is so compelling that it should override the respondent’s plea of religious freedom, nor is it shown that the means employed by the government in pursuing its interest is the least restrictive to respondent’s religious exercise. The case was ordered remanded to the Office of the Court Administrator for the application of this test.

iiia1) Thus, in the final resolution of the case [*June 22, 2006*], it was held that if the burden is great and the sincerity of the religious belief is not in question, adherence to benevolent neutrality accommodation approach requires that the Court make an individual determination and not dismiss the claim outright. Accordingly, the Court found that in this particular case and under the distinct circumstances prevailing, respondent Escritor's arrangement cannot be penalized as she made out a case for exemption from the law based on her fundamental right to freedom of religion. Concluding, the high tribunal said that the Court recognizes that the state interests must be upheld in order that freedoms, including religious freedom, may be enjoyed. But in the area of religious exercise as a preferred freedom, man stands accountable to an authority higher than the state, and so the state interest sought to be upheld must be so compelling that the violation will erode the very fabric of the state that will also protect the freedom. In the absence of a showing that such state interest exists, man must be allowed to subscribe to the infinite.

iib) State regulations imposed on solicitations for religious purposes do not constitute an abridgment of freedom of religion; but solicitations for religious purposes are not covered by PD 1564 (Solicitation Permit Law) which requires a prior permit from DSWD in solicitations for "charitable or public welfare purposes" [*Centeno v. Villalon*, 236 SCRA 197].

iic) RA 7716, insofar as the sale of religious articles, as well as their printing and publication, is subject to VAT, is not unconstitutional. As the US Supreme Court held in *Jimmy Swaggart Ministries v. Board of Equalization*, the free exercise clause does not prohibit imposing a generally applicable sales and use tax on the sale of religious materials by a religious organization [*Tolentino v. Secretary of Finance, supra*]. In the Resolution on the Motion for Reconsideration, October 30, 1995, the Supreme Court said that the resulting burden on the exercise of religious freedom is so incidental as to make it difficult to differentiate it from any other economic imposition that might make the right to disseminate religious doctrines costly. At any rate, liability for VAT must be decided in concrete cases in the event the BIR assesses this tax on the Philippine Bible Society.

H. Liberty of abode and of travel. rSec. 6. Art. III: "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law."]¹

1. *Limitation on liberty of abode:* lawful order of the court.

a) In *Villavicencio v. Lukban, supra.*, the “deportation” of some 170 women of ill repute to Davao on orders of the Mayor of Manila was held unlawful. In *Caunca v. Salazar, 82 Phil 851*, it was held that a maid has the right to transfer to another residence even if she had not yet paid the amount advanced for her transportation from the province by an employment agency which was then effectively detaining her because of the moral duress exerted on her.

i) However, in *Rubi v. Provincial Board of Mindoro, supra.*, it was held that the respondents were justified in requiring the members of certain non-Christian tribes to reside only within a reservation. This restriction was intended to promote their better education, advancement and protection.

b) *Art. 13, Universal Declaration of Human Rights*, and *Art. 12, Covenant on Civil and Political Rights*, provide that everyone has the right of freedom of movement and residence within the border of each State.

2. *Limitations on right to travel*: interest of national security, public safety or public health, as may be provided by law.

a) In *Philippine Association of Service Exporters v. Drilon, supra.*, an administrative order issued by the Secretary of Labor temporarily suspending the deployment of Filipino female domestic helpers abroad was upheld, in view of the need to extend protection to female domestics who were most prone to exploitation and abuse by their foreign employers. In *Marcos v. Manglapus, 178 SCRA 760*, the Supreme Court sustained the refusal of the government to allow the petitioner's return to the Philippines, on the ground that it would endanger national security.

b) *A lawful order of the court is also a valid restriction on the right to travel*. In *Manotoc v. Court of Appeals, 142 SCRA 149*, the Court held that the trial court may validly refuse to grant the accused permission to travel abroad, even if the accused is out on bail. In *Silverio v. Court of Appeals, 195 SCRA 760*, the Court said that Art. III, Sec. 6, should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of “national security, public safety or public health” and “as may be provided by law”, a limitative phrase which did not appear in the 1973 text, xxx Holding an accused in a criminal case within the reach of the courts by preventing his departure from the Philippines must be considered a valid restriction on his right to travel, so that he may be dealt with in accordance

with law. In *Defensor-Santiago v. Vasquez*, 217 SOFIA 633, the Court further clarified the foregoing principles, saying: [i] The hold-departure order is but an exercise of the respondent court's inherent power to preserve and maintain the effectiveness of its jurisdiction over the case and over the person of the accused; [ii] By posting bail, the accused holds herself amenable at all times to the orders and processes of the court, thus, she may be legally prohibited from leaving the country during the pendency of the case; and [iii] Parties with pending cases should apply for permission to leave the country from the very same courts which, in the first instance, are in the best position to pass upon such applications and to impose the appropriate conditions therefor, since they are conversant with the facts of the cases and the ramifications or implications thereof. In *Imelda Romualdez Marcos v. Sandiganbayan*, G.R. No. 115132, August 9, 1995, the Court upheld the denial by the Sandiganbayan of the request to travel abroad filed by Mrs. Imelda Romualdez Marcos, inasmuch as she had already been convicted. The person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice. Whether the accused should be permitted to leave the country for humanitarian reasons is a matter addressed to the court's discretion. See also *Yap v. Court of Appeals*, G.R. No. 141529, June 6, 2001.

c) Art. 13 (2), *Universal Declaration of Human Rights*, provides that everyone has the right to leave any country, including his own, and to return to his country. Art. 12 (4), *Covenant on Civil and Political Rights*, provides that no one shall be arbitrarily deprived of the right to enter his own country. But see *Marcos v. Manglapus, supra..*

I. Right to information. fSec. 7, Art. III: "*The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development shall be afforded the citizen, subject to such limitations as may be provided by law.]*

1. Scope of the Right. In *Chavez v. PEA and Amari*, G.R. No. 133250, July 9, 2002, it was held that the right to information contemplates inclusion of negotiations leading to the consummation of the transaction. Otherwise, the people can never exercise the right if no contract is consummated, or if one is consummated, it may be too late for the public to expose its defects. However, the right only affords access to records, documents and papers, which means the opportunity to inspect and copy them at his expense. The exercise is also subject to reasonable regulations to protect the integrity of public records and to minimize disruption of government operations.

a) Exceptions. The right does not extend to matters recognized as

privileged information rooted in separation of powers, nor to information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused [*Chavez v. PEA and Amari, supra.*]. Likewise, in *Garcia v. Board of Investments*, 177 SCRA 374, the Supreme Court upheld the decision of the Board of Investments in denying the petitioner access to trade and industrial secrets.

2. *Need for publication of laws reinforces this right.* In *Tanadav. Tuvera, supra.*, the Court said: "Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people."

3. *Some cases.* In *Baldoza v. Dimaano*, 71 SCRA 14, the Supreme Court sustained the right of a municipal mayor to examine judicial records, subject to reasonable rules and conditions. Quoting from *Subido v. Ozaeta*, 80 Phil 383, the Court said "Except perhaps when it is clear that the purpose of the examination is unlawful or sheer, idle curiosity, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons and objects of the person seeking access to the records". In *Legaspi v. Civil Service Commission, supra.*, it was held that while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records, cannot be discretionary on the part of said agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of mandamus in a proper case. In *Chavez v. PCGG*, G.R. No. 130716, December 9, 1998, the Supreme Court upheld the right of the petitioner, a former Solicitor General, to disclosure of any agreement which may have been arrived at concerning the purported ill-gotten wealth of the Marcoses.

a) In *Aquino-Sarmiento v. Morato*, 203 SCRA 515, it was held that voting slips constituting the decision of the members of the Movie and Television Review and Classification Board are not private nor confidential, because they are made in the exercise of official functions. In *Valmonte v. Belmonte, supra.*, the Court rejected the contention of GSIS that to give the information would violate the right to confidentiality of the borrower, saying that this is a right personal to the borrower and may not be invoked by the GSIS. Further, the GSIS is a trustee of contributions from the government and its employees and

the administrator of various insurance programs for the benefit of the latter. Undeniably, its funds assume a public character. Moreover, the supposed borrowers were members of the defunct Batasan Pambansa who themselves appropriated funds for the GSIS and were therefore expected to be the first to see to it that the GSIS performed its tasks with the greatest degree of fidelity and that all its transactions were above board.

b) In *Echegaray v. Secretary of Justice, G.R. No. 132601, October 12, 1998*, it was held that Sec. 19 of the rules and regulations implementing R.A. 8177, which provides that the manual setting forth the procedure for administering the lethal injection shall be confidential, was unduly suppressive, because the contents of the manual are matters of public concern affecting the lives of the people and such matters naturally arouse the interest of the individual citizen.

c) In *Re: Request for Live Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases against former President Joseph Ejercito Estrada, Secretary of Justice Hernando Perez v. Joseph Ejercito Estrada, A.M. No. 00-1-4-03-SC, June 29, 2001*, the Supreme Court denied petitioners' request to televise and broadcast live the trial of president Joseph Estrada before the Sandiganbayan. The Supreme Court said that when the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial race against another, jurisprudence tells us that the right of the accused must be preferred to win. With the possibility of losing not only the precious liberty but also the very life of an accused, it behoves aJL to make absolutely certain that an accused receives a verdict solely on the basis of a just and dispassionate judgment, a verdict that would come only after the presentation of credible evidence testified to by unbiased witnesses unswayed by any kind of pressure, whether open or subtle, in proceedings that are devoid of histrionics that might detract from its basic aim to ferret veritable facts free from improper influence, and decreed by a judge with an unprejudiced mind unbridled by running emotions or passions.

i) In its resolution on the motion for reconsideration (*September 13, 2001*), the Court ordered the audio-visual recording of the trial for documentary purposes, not for live or real time broadcast. Only later will they be made available for public showing.

d) In *Bantay Republic Act No. 7941 (BA-RA) v. Comelec, G.R. No. 177271, May 4, 2007*, the Court declared that the Comelec has the constitutional duty to disclose and release the names of the nominees of the party-list groups.

The right to information is a public right, where the real parties in interest are the public, or the citizens, to be precise. The right to information and its companion right of access to official records, like all constitutional guarantees, are not absolute. The people's right to know is limited to "matters of public concern" and is further subject to such limitation as may be provided by law. Similarly, the policy of public disclosure in Sec. 28, Art. II, is confined to transactions involving "public interest" and is subject to reasonable conditions prescribed by law. As may be noted, however, no national security or like concerns is involved in the disclosure of the names of the nominees of the party-list groups in question.

e) In *Hilado v. Reyes*, G.R. no. 163155, July 21, 2006, where petitioners, who had filed an action for damages against the decedent during his lifetime and whose claims for damages were included in the inventory of liabilities in the proceedings for the settlement of the estate, sought to see the court records and obtain true copies of the inventory of the assets of the deceased but was denied by the probate court, the Supreme Court granted access to the information sought. The Court held that unlike court orders and decisions, pleadings and other documents filed by parties to a case need not be matters of public concern or interest, and that access to public records may be restricted on a showing of good cause. In the case at bar, given the rights of the parties based on relevant factors, including the nature of the controversy and the privacy interests involved vis-avis the right to information, the purpose of petitioners to monitor the compliance with the rules governing the preservation and proper disposition of the assets of the estate is legitimate.

J. Right to form associations. [Sec. 8, Art. III: "The right of the people, including those employed in the public and private sectors, to form unions, associations or societies for purposes not contrary to law shall not be abridged."] The right is reinforced by Sec. 2 (5), Art. IX-B, and Sec. 3, par. 2, Art. XIII.

1. *Scope.* The right to form, or join, unions or associations, includes the right not to join or, if one is already a member, to disaffiliate from the association. In *Volkschel Labor Union v. Bureau of Labor Relation*¹, 137 SCRA 42, the right of a labor union to disaffiliate from a labor federation was held to be part of the right to association. In *Central Negros Electric Cooperative v. Secretary of Labor*, 201 SCRA 584, the Supreme Court upheld the right of employees of the electric cooperative to withdraw their membership from the cooperative in order to join a labor union.

a) *The right to strike.* However, even if the provision expressly guarantees the right to form unions in public and private sectors, members of the civil service may not declare a strike to enforce economic demands

[*Alliance of Government Workers v. Ministry of Labor and Employment*, 124 SCRA 1; *Social Security Employees Association v. Court of Appeals*, 175 SCRA 686]. As held in *Bangalisan v. Court of Appeals*, *supra*., the ability to strike is not essential to the right of association. The right of the sovereign to prohibit strikes or work stoppages by public employees was clearly recognized at common law; thus, it has been frequently declared that modern rules which prohibit strikes, either by statute or by judicial decision, simply incorporate or reassert the common law rules. This was reiterated in *Jacinto v. Court of Appeals*, G.R. No. 124540, November 4, 1997, in *De la Cruz v. Court of Appeals*, *supra*., and in *Acosta v. Court of Appeals*, *supra*.

i) The claim that the right to strike is part of the the freedom of expression and the right to peacefully assemble and petition the government for redress of grievances, and should thus, be recognized even in the case of government employees, was rejected by the Supreme Court in *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*, G.R. No. 170132, December 6 2006.

2. The right is not absolute. In *People v. Ferrer*, 48 SCRA 382, it was held that the Anti-Subversion Act does not violate this provision, because the purpose of the statute was to outlaw only those organizations aimed at the violent overthrow of the government, and that the government has a right to protect itself against subversion is a proposition too plain to require elaboration. In *Occena v. Comelec*, 127 SCRA 404, it was held that the right to association was not violated when political parties were prohibited from participating in the barangay elections in order to insure the non-partisanship of candidates; political neutrality is needed to discharge the duties of barangay officials. In *Victoriano v. Elizalde Rope Workers Union*, *supra*., reiterated in *Gonzales v. Central Azucarera de Tarlac*, 139 SCRA 30, the Supreme Court upheld the validity of RA 3350, allowing workers to dissociate from or not to join a labor union, despite a closed shop agreement, if they are members of any religious sect which prohibits affiliation of their members in any such labor organization. In *United Pepsi Cola Supervisory Union v. Laguesma*, G.R. No. 122226, March 25, 1998, it was held that Art. 245 of the Labor Code which makes managerial employees ineligible to join, assist or form a labor union, does not violate Sec. 8, Art. III of the Constitution. Those who qualify as top or middle managers are executives who receive from their employers information that is not only confidential but also not generally available to the public, or to their competitors, or to other employees. And, finally, in *In Re: Edition*, 84 SCRA 554, it was held that compulsory membership of a lawyer in the Integrated Bar of the Philippines does not violate the constitutional guarantee.

K. Non-impairment clause. [Sec. 10, Art. III: “No law impairing the obligation of contracts shall be passed.”]

1. It is ingrained in jurisprudence that the constitutional prohibition does not prohibit every change in existing laws. To fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial. Moreover, the law must effect a change in the rights of the parties with reference to each other, and not with respect to nonparties [*Philippine Rural Electric Cooperatives Association v. Secretary, DUG*, G.R. No. 143076, June 10, 2003].

a) Impairment is anything that diminishes the efficacy of the contract. There is substantial impairment when the law changes the terms of a legal contact between the parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms [*Clements v. Nolting*, 42 Phil 702],

2. *Limitations:*

a) Police Power. The reason for this is that public welfare is superior to private rights [*PNB v. Remigio*, G.R. No. 78508, March 21, 1994],

i) In *Ortigas v. FeatiBank*, 94 SCRA 533, reiterated in *Sangalang v. Intermediate Appellate Court*, 176 SCRA 719, and in *Presley v. Bel-Air Village Association*, 201 SCRA 13, the Supreme Court said that a municipal zoning ordinance is a police measure and prevails over a restriction contained in the title to property. In *Lozano v. Martinez*, 146 SCRA 323, B.P 22 was sustained as not violative of the non-impairment clause, and even if it were, the law was a police measure and therefore superior to contracts. In *Ilusorio v. CAR*, 17 SCRA 25, pre-existing share tenancy contracts could be validly converted into leasehold tenancy through the valid exercise of police power. In *Tiro v. Hontanasas*, 125 SCRA 697, an administrative order discontinuing the assignment of salaries of public-school teachers to their creditors was declared not violative of the guarantee, as the latter could still collect its loans after the salaries had been received by the teachers themselves. In *Canleon v. Agus Development Corporation*, 207 SCRA 748, BP 25, regulating the rentals of dwelling units, was held as a constitutional exercise of the police power, and an exception to the non-impairment clause. In *Conference of Maritime Manning Agencies v. POEA*, *supra.*, the POEA resolution and memorandum circular increasing and adjusting rates of compensation and other benefits in the POEA Standard Employment Contracts for seafarers, being a valid implementation of E.O. 797 which was enacted under the police power of the State, prevail over the non-impairment clause. See also *PNB v. Office of the President*, *supra.*, where the Supreme Court said that PD 957, being

a police measure, prevails over the non-impairment clause. In *Blaquera v. Alcala*, G.R. No. 109406, September 11, 1998, it was held that the productivity incentive benefit, limited to only P2.000 by Administrative Order No. 29 issued by President Ramos, is in the nature of a bonus which is not a demandable or enforceable obligation.

ii) But in *Ganzon v. Inserto*, 123 SCRA 713, it was held that the clause would be violated by the substitution of a mortgage with a security bond as security for the payment of a loan, as this would change the terms and conditions of the original mortgage contract over the mortgagee's objections.

- b) Eminent Domain. See *Kabiling v. NHA*, 156 SCRA 623
- c) Taxation. See *La Insular v. Machuca*, 39 Phil. 567.

3. *Franchises, privileges, licenses, etc., do not come within the context of the provision*. See Sec. 11, Art. XII, which provides that "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". Thus, in *C & M Timber Corporation v. Alcala*, *supra*., the Supreme Court, quoting *Ysmael v. Deputy Executive Secretary*, 190 SCRA 673, declared: "Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. They merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interest so requires. They are not contracts within the purview of the due process clause." The same principle was reiterated in *Alvarez v. PICOP Resources*, G.R. No. 162243, November 29, 2006.

a) See also *Telecommunications and Broadcast Attorneys of the Philippines v. Comelec*, *supra*., where the Supreme Court said that all radio and TV stations have franchises, and the challenged provision of the Omnibus Election Code was inserted by Congress in the exercise of this power under Sec. 11, Art. XII of the Constitution.

L. *Free access to courts*. fSec. 11. Art. III: "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.]¹

1. This is a social justice provision, implemented by the Rules of Court provision allowing "pauper suits". Note the additional guarantee of "adequate legal assistance". Read also par. 5, Sec. 5, Art. VIII.

M. Miranda Doctrine. [Sec. 12. Art. III]: “(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (2) No torture, force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Secret detention places, solitary, incomunicado, or other similar forms of detention are prohibited. (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. (4) The law shall provide for penal and civil sanctions for violations of this section, as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. ”]

1. Source: *Miranda v. Arizona*, 384 U.S. 436.

2. Rights are available only during custodial investigation. The rights guaranteed in Sec. 12, Art. III, exist only in “custodial investigation” or “incustody interrogation of accused persons” [*People v. Judge Ayson*, 175 SCRA 216], which has been defined as “any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way”. The rule begins to operate at once as soon as the investigation ceases to be a general inquiry into an unsolved crime, and direction is then aimed upon a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements [*People v. de la Cruz*, G.R. No. 118866-68, September 17, 1997]. In *De la Torre v. Court of Appeals*, G.R. No. 102786, August 14, 1998, it was reiterated that the Miranda rights apply only from the moment the investigating officer begins to ask questions for the purpose of eliciting admissions, confessions or any information from the accused. Thus, in *People v. Baloy*, G.R. No. 140740, April 12, 2002, it was held that this guarantee does not apply to a spontaneous statement, not elicited through questioning by the authorities but given in an ordinary manner whereby the suspect orally admitted having committed the offense. Neither can it apply to admissions or confessions made by a suspect before he was placed under custodial investigation. In this case, the narration before the Barangay Captain prior to custodial investigation was admissible in evidence, but not the admissions made before Judge Dicon, inasmuch as the questioning by the judge was done after the suspect had been arrested and such questioning already constituted custodial investigation.

a) Under R.A. 7438, “custodial investigation” shall include the

practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. Thus, in *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, it was held that from the time Del Rosario was "invited" for questioning at the house of the barangay captain, he was already under effective custodial investigation. Because he was not apprised nor made aware thereof by the investigating officers, and because the prosecution failed to establish that Del Rosario had waived his right to remain silent, his verbal admissions were inadmissible against him. In *People v. Ordono*, G.R. No. 132154, June 29, 2000, the Supreme Court held that custodial investigation began when the accused Ordono and Medina voluntarily went to the Santol Police Station to confess, and the investigating officer started asking questions to elicit information from them. In *People v. Lugod*, G.R. No. 136253, February 21, 2001, it was held that the accused should have been entitled to the Miranda rights, because even assuming that he was not yet under interrogation at the time he was brought to the police station, his confession was elicited by a police officer who promised to help him if he told the truth. Furthermore, when he allegedly pointed out the body of the victim, the atmosphere was highly intimidating and not conducive to a spontaneous response as the whole police force and nearly 100 townspeople escorted him there. Not having the benefit of counsel and not having been informed of his rights, the confession is inadmissible. In *People v. Pasudag*, G.R. No. 128822, May 4, 2001, when the accused was brought to the station and made to sign the confiscation (of the marijuana) report, he was already under custodial investigation.

b) *Police Line-up*. A police line-up is not considered a part of any custodial inquest, because it is conducted before that stage of investigation is reached [*People v. Bravo*, G.R. No. 135562, November 22, 1999], *People v. Amestuzo*, G.R. No. 104383, July 12, 2001, reiterates this rule, because in a police line-up, the process has not yet shifted from the investigatory to the accusatory stage, and it is usually the witness or the complainant who is interrogated and who gives a statement in the course of the line-up. In *People v. Piedad*, G.R. No. 131923, December 5, 2002, it was held that the right to counsel accrues only after an investigation ceases to be a general inquiry into an unsolved crime and commences an interrogation aimed at a particular subject who has been taken into custody and to whom the police would now propound questions. Thus, in *People v. Dagpin*, G.R. No. 149560, June 10, 2004, where three eyewitnesses identified the accused at the police station as the person who shot the victim at the scene of the crime, the accused cannot claim that he was deprived of his constitutional rights even if he was without counsel at the time, because he was not yet then under custodial investigation.

i) However, in *People v. Escordial*, G.R. Nos. 138934-35, January 16, 2002, where the accused, having become the focus of attention by the police after he had been pointed to by a certain Ramie as the possible perpetrator of the crime, it was held that when the out-of-court identification was conducted by the police, the accused was already under custodial investigation.

ii) An out-of-court identification may be made in a “*show-up*” (where the accused is brought face to face with the witness for identification), or in a “*police line-up*” (where the suspect is identified by a witness from a group of persons gathered for that purpose). During custodial investigation, these types of identification have been recognized as “critical confrontations of the accused by the prosecution”, necessitating the presence of counsel for the accused. This is because the result of these pre-trial proceedings “might well settle the fate of the accused and reduce the trial to a mere formality”. Thus, any identification of an uncounseled accused made in a police line-up or in a show-up after the start of custodial investigation is inadmissible in evidence against him [*People v. Escordial, supra.*].

c) *Investigations not considered custodial interrogation.* A person under normal audit investigation is not under custodial investigation, because an audit examiner can hardly be deemed to be the law enforcement officer contemplated in the rule [*Navallo v. Sandiganbayan*, 234 SCRA 175]. Because the Court Administrator is not a law enforcement officer, an investigation conducted by him does not constitute custodial investigation within the contemplation of the constitutional guarantee [*Office of the Court Administrator v. Sumilang*, 271 SCRA 316]. Neither is the investigation conducted by an employer deemed custodial inquest which will entitle the employee to the Miranda rights [*Manuel v. N.C. Construction Supply*, G.R. No. 127553, November 28, 1997]. An investigation conducted by the Civil Service Commission involving fake eligibility is not custodial investigation [*Remolona v. Civil Service Commission*, G.R. No. 137473, August 02, 2001]. In *People v. Salonga*, G.R. No. 131131, June 21, 2001, where, after an audit, the accused was summoned to appear before the Assistant Accountant of MetroBank and, in the course of the interview, accused admitted having issued the subject cashier's checks without any legitimate transaction, the written confession was held admissible in evidence inasmuch as the interview did not constitute custodial investigation. In *Ladiana v. People*, G.R. No. 144293, December 24, 2002, it was held that the counter-affidavit submitted by the respondent during preliminary investigation is admissible in evidence, because preliminary investigation is not part of custodial investigation. The interrogation by the police, if any, would already have been ended at the time of the filing of the

criminal case in court or in the public prosecutor's office. In *People v. Manzano, G.R. No. 86555, November 16, 1993*, it was held that when an arrested person signs a booking sheet and an arrest report at the police station, he does not admit the commission of an offense nor confess to any incriminating circumstance. The booking sheet is no more than a record of arrest and a statement on how the arrest was made. It is simply a police report, and it has no probative value as an extrajudicial statement of the person being detained. The signing by the accused of the booking sheet and the arrest report is not a part of custodial investigation.

i) In *People v. Endino, G.R. No. 133026, February 20, 2001*, the Supreme Court ruled that the admission of the videotaped confession is proper. The interview was recorded on video and it showed accused unburdening his guilt willingly, openly and publicly in the presence of newsmen. Such confession does not form part of custodial investigation as it was not given to police officers but to media men in an attempt to solicit sympathy and forgiveness from the public. There was no showing that the interview was coerced or against his will. However, because of the inherent danger in the use of television as a medium for admitting one's guilt, courts are reminded that extreme caution must be taken in further admitting similar confessions.

ii) Spontaneous statements, or those not elicited through questioning by law enforcement officers, but given in an ordinary manner where the appellant verbally admits to having committed the offense, are admissible [*People v. Guillermo, G.R. No. 147786, January 20, 2004*].

d) The rights guaranteed by this provision refer to testimonial compulsion only [*People v. Paynor, 261 SCRA 615*].

3. *What rights are available.* The rights under the Miranda Doctrine which a person under custodial investigation is entitled to are:

a) To remain silent. If the suspect refuses to give a statement, no adverse inference shall be made from his refusal to answer questions.

b) To competent and independent counsel [preferably of his own choice] at all stages of the investigation [*People v. Hassan, 157 SCRA 261; People v. Layuso, 175 SCRA 47*]. If he cannot afford the services of counsel, he must be provided (by the Government) with one. ⁱ⁾

i) The right to counsel is intended to preclude the slightest coercion as would lead the accused to admit something false. In *Gamboa v. Cruz, 162 SCRA 642*, the Supreme Court held that the right to counsel

attaches upon the start of the investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the respondent. At that point, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions from the lips of the person undergoing investigation.

ia) The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth [*People v. Enanoria*, 209 SCRA 577; *People v. Continente*, G.R. No. 100801, August 25, 2000]. Indeed, as an officer of the Court, it is an attorney's duty, first and foremost, to seek the truth. However, counsel should be able, throughout the investigation, to explain the nature of the questions by conferring with his client and halting the investigation should the need arise. The duty of the lawyer includes ensuring that the suspect under custodial investigation is aware that the right of an accused to remain silent may be invoked at any time [*People v. Sayaboc*, G.R. No. 147201, January 15, 2004]. Thus, where the lawyer merely affixed his signature to the confession as "saksi", or as witness, and he testified that he had not assisted the accused when the latter was investigated by the police, the extra-judicial confession is inadmissible in evidence [*People v. Peralta*, G.R. No. 145176, March 30, 2004].

ib) When the accused is brought to the police station only to be identified by a witness, technically, he is not yet under custodial investigation [*People v. Hatton*, 210 SCRA 1]. Thus, in *People v. Buntan*, 221 SCRA 421, inasmuch as all that the police investigator did was to show the suspect the victim's sister and the latter's sworn statement identifying him as one of the two suspects in the killing, and the police had not started questioning, interrogating or exacting a confession from the suspect, the right to counsel may not yet be validly invoked. However, in *People v. Bolanos*, 211 SCRA 262, where, while being conducted to the police station on board the police jeep, the accused made an extrajudicial confession that he had killed the victim. Inasmuch as the uncounselled confession was the sole basis of the judgment of conviction, it was held that the trial court committed a reversible error. While on board the police jeep, the accused was deemed to have been already under custodial investigation, and should have been informed of his rights.

ic) The right to counsel is not required in a police line-up, inasmuch as police line-up is not part of the custodial inquest. Neither may this right be invoked when the suspect is given a paraffin test, as he is not yet under custodial investigation [*People v. de Guzman*, 224 SCRA 93; *People v. Lamsing*, 248 SCRA 471]. The suspect is likewise not entitled to the Miranda rights when he is merely photographed or paraffin-tested.

id) But in *People v. Ordono*; G.R. No. 132154, June 29,

2000, it was held that custodial investigation commenced when the accused Ordono and Medina voluntarily went to the Santol Police Station to confess, and the investigating officer started asking questions to elicit information from them. At that point, the right of the accused to counsel automatically attached to them. When, because of the non-availability of practising lawyers in that remote town, no counsel could be provided, the police should have already desisted from continuing with the interrogation, even if the accused gave consent to the investigation. The presence of the parish priest and the Municipal Mayor of Santol, as well as the relatives of the accused, did not cure in any way the absence of a lawyer during the investigation. In providing that during the taking of an extrajudicial confession the accused's parents, older brothers or sisters, spouse, the Mayor, Municipal Judge, district school supervisor, or priest or minister of the gospel as chosen by the accused may be present, R.A. 7438 does not propose that they appear in the alternative or as a substitute of counsel without any condition. It is explicitly provided that before the above-mentioned persons can appear, two conditions must be met, namely: [a] counsel of the accused is absent; and [b] a valid waiver had been executed. In the absence of a valid waiver, none of the above-named persons can stand in lieu of counsel.

ii) The modifier "competent and independent" in the 1987 Constitution is not an empty rhetoric. It stresses the need to assure the accused, under the uniquely stressful conditions of custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer. The desired role of lawyer in the process of custodial investigation is rendered meaningless if the lawyer merely gives perfunctory advice as opposed to meaningful advocacy of the rights of the person undergoing questioning. If the advice given is so cursory as to be useless, voluntariness is impaired [*People v. Suela, G.R. Nos. 133570-71, January 15, 2002*]. To be competent and independent, it is only required for the lawyer to be "willing to safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights" [*People v. Bagnate, G.R. Nos. 133685-86, May 20, 2004*, citing *People v. Porio, G.R. No. 117202, February 13, 2002*], '

jia) Thus, in *People v. Lucero*, 244 SCRA 425, the Court held that the petitioner was denied the right to counsel where the lawyer, not counsel of choice, arrived at the CIS headquarters around 9pm, the second night of appellant's detention, talked to the appellant about his rights, left the appellant in the custody of CIS agents during the actual interrogation, and then came back the next day for examination and signature of the statement of the appellant. A similar conclusion was reached in *People v. Morial*, G.R. No. 129295, August 15, 2001, where the lawyer left after about 30 minutes

from the start of the investigation with instructions that before the accused signs any extrajudicial statement, it should be shown to him first. Indeed, as held in *People v. Bermas, G.R. No. 120420, April 21, 1999*, the mere *pro forma* appointment of a counsel de officio who fails to genuinely protect the interests of the accused merits disapprobation.

iib) *Not independent counsel.* In *People v. Bandula, 232 SCRA 565*, the Supreme Court stressed that the Constitution requires that the counsel be independent. Obviously, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney, whose interest is admittedly adverse to the accused. As legal officer of the municipality, it is seriously doubted whether a municipal attorney can effectively undertake the defense of the accused without running into conflict of interest. In *People v. Januario, 267 SCRA 608*, it was held that there was a violation of this provision where the counsel who assisted the accused in the custodial investigation conducted by the NBI was an applicant for employment with the NBI, as he, in fact, joined the NBI a few months later. In *People v. Espanola, infra.*, the Supreme Court declared that the City Legal Officer was not an independent counsel within the purview of the constitutional provision. See also *People v. Labtan, G.R. No. 127497, December 8, 1999*. Neither can the Mayor be considered an independent counsel, because as Mayor his duties were inconsistent with his responsibilities to the suspect [*People v. Velarde, G.R. No. 139933, July 18, 2002; People v. Taliman, G.R. No. 109143, October 11, 2000*].

iic) However, the mere fact that the lawyer was a retired member of the Judge Advocate's Office does not cast any doubt on his impartiality in assisting the accused during custodial investigation [*People v. Hernandez, G.R. No. 117629, December 4, 1997*].

iii) The phrase "preferably of his own choice" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise, the tempo of custodial investigation will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest [*People v. Barasina, 229 SCRA 450*]. Thus, in *People v. Espiritu, G.R. No. 128287, February 2, 1999*, it was held that the right to counsel does not mean that the accused must personally hire his own counsel. The constitutional requirement is satisfied when a counsel is engaged by anyone acting on behalf of the person under investigation, or appointed by the court upon petition by said person or by someone on his behalf.

iiia) While the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel — or where the preferred lawyer is not available — is naturally lodged in the police investigators, the suspect has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer [*People v. Jerez, G.R. No. 114385, January 19, 1998; People v. Gallardo, G.R. No. 113684, January 25, 2000; People v. Continente, G.R. No. 100801, August 25, 2000*

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iiib) Thus, in *People v. Alberto, G.R. No. 132374, August 22, 2002*, where the accused was not asked whether he wishes or can afford to retain his own lawyer, but was merely told that Atty. Cimafranca was a lawyer and asked if he needed his services, it was clear that he was not made aware that he could choose his own lawyer other than the one assigned by the police..

iv) *Confession obtained after charges had already been filed.* In *People v. Espanola, G.R. No. 119308, April 18, 1997*, the policemen brought accused Paquingan to the Prosecutor's Office as the accused manifested his desire to confess. But when the notes were transcribed, accused refused to sign, and only the lawyers who assisted him signed the confession. It appeared, however, that when the Prosecutor took the confession, an information for rape with homicide had already been filed against Paquingan and his co-accused. Although Paquingan was no longer under custodial investigation when he gave his confession because charges had already been filed against him, nonetheless, the Supreme Court said that the right to counsel still applies in certain pre-trial proceedings that are considered "critical stages" in the criminal process. Custodial interrogation before or after charges have been filed, and non-custodial interrogation after the accused has been formally charged, are considered "critical pre-trial stages" in the criminal process.

c) To be informed of such rights

i) In *People v. Nicandro, 141 SCRA 289*, the Supreme Court said that this contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. In *People v. Canela, 208 SCRA 842*, the Supreme Court, reiterating the foregoing, said that making the accused read his constitutional rights is simply not enough. The prosecution must show that the accused understood

what he read, and that he understood the consequences of his waiver. In *People v. Agustin*, 240 SCRA 541, it was held that the right to be informed carries with it the correlative obligation on the part of the investigator to explain, and contemplates effective communication which results in the subject understanding what is conveyed. Since it is comprehension sought to be attained, the degree of explanation required will necessarily vary and depend on the education, intelligence and other relevant personal circumstances of the person under investigation. See also *People v. Manriquez*, G.R. No. 122510, March 17, 2000; *People v. Samolde*, G.R. No. 128551, July 31, 2000.

ii) In *People v. Sayaboc*, G.R. No. 147201, January 15, 2004, the Court said that the right to be informed should allow the suspect to consider the effects and consequences of any waiver he might make of his rights. More so, when the suspect is like Sayaboc who has an educational attainment of Grade IV, was a stranger in Nueva Vizcaya, and had already been under the control of the police officers for two days previous to the investigation, albeit for another offense.

■ d) Rights cannot be waived except in writing and signed by the person in the presence of his counsel.

i) Sec. 2(d), R.A. 7438, provides that any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

e) No torture, force, etc., which vitiates the free will shall be used.

i) Where the appellants did not present evidence of compulsion or duress or violence on their persons; where they failed to complain to the officers who administered the oaths; where they did not institute any criminal or administrative action against the alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies and where they did not have themselves examined by a reputable physician to buttress their claim: all these should be considered factors indicating voluntariness of confessions [*People v. Bagnate*, G.R. Nos. 133685-86, May 20, 2004].

f) Secret detention places, etc., are prohibited

g) Confessions/admissions obtained in violation of rights are inadmissible in evidence.

i) There are two kinds of involuntary or coerced confessions treated in this section, namely (1) coerced confessions, the product of third degree methods, such as torture, force, violence, threat and intimidation, which are dealt with in paragraph 2; and (2) uncounseled statements given without the benefit of the Miranda warning, which are the subject of paragraph 1 [*People v. Vallejo, G.R. No. 144656, May 02, 2002*].

ii) Note that the alleged infringement of the constitutional rights of the accused during custodial investigation is relevant and material only where an extrajudicial confession or admission from the accused becomes the basis of conviction [*National Bureau of Investigation v. Judge Ramon Reyes, A.M. -MTJ-97-1120, February 21, 2000*].

iii) In *People v. Bolanos*, 211 SCRA 262, while being conducted to the police station on board the police jeep, the accused made an extrajudicial confession that he had killed the victim. Inasmuch as this uncounseled confession was the sole basis of the judgment of conviction, the lower court committed a reversible error. While on board the police jeep, the accused was already under custodial investigation, and should have been informed of his rights. In *People v. de la Cruz*, 224 SCRA 506, where appellant, after having been apprehended, but without the assistance of counsel, volunteered information that he had killed his wife and even led the authorities to the place where he allegedly buried the deceased (which yielded eight bones after the police had dug the site), it was held that the extrajudicial confession of the appellant is inadmissible for failure to comply with the constitutional requirements. In *People v. Bonola*, G.R. No. 116394, June 19, 1997, it was held that the 1973 Constitution did not distinguish between verbal and non-verbal confessions; as long as the confession is uncounseled, it is inadmissible in evidence. What is sought to be avoided by the rule is "the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense the very evidence with which to prosecute and thereafter convict him". In *People v. Bernardino*, 193 SCRA 448, it was held that the verbal admission made by the accused that he sold marijuana to Joson is inadmissible in evidence, because the accused had not been properly informed of the Miranda rights. In *People v. Morada*, G.R. No. 129723, May 19, 1999, the Supreme Court held that the verbal confession of the accused to Barangay Captain Manimba was made in the course of custodial investigation. Accordingly, the confession was inadmissible in evidence. In *People v. Samolde*, G.R. No. 128551, July 31, 2000, even as the extrajudicial confession was in writing and signed by counsel, because the accused was not given the Miranda warnings [i.e., informed of his right to remain silent, that anything he says can and will be used against him, and that he is entitled to the assistance of counsel], the confession was held inadmissible in evidence.

iv) But in *People v. Andan*, G.R. No. 116437, March 3, 1997, the Supreme Court held that the voluntary but uncounselled confession of the accused to the Mayor and to the media was admissible in evidence. In this case, it was noted that it was the accused who freely, spontaneously and voluntarily sought the Mayor for a private meeting, and the Mayor did not know that the accused was going to confess his guilt. Accused talked with the Mayor as a confidant, not as a law enforcement officer. The confession made by the accused to the news reporters was likewise free of undue influence from the police authorities. The news reporters acted as news reporters when they interviewed the accused; they were not acting under the direction and control of the police. Constitutional procedures on custodial investigation do not apply to the spontaneous statements not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime. This is reiterated in *People v. Domantay*, G.R. No. 130612, May 11, 1999, where the Supreme Court said that the oral confessions made to newsmen are not covered by Sec. 12, Art. III. The Bill of Rights does not concern itself with the relationship between a private individual and another individual. Rather, it governs the relationship between the individual and the State. The prohibitions therein are addressed primarily to the State and its agents. As to the requirement that the extrajudicial confession must be corroborated by other evidence, the Court said that there was the *corpus delicti* which corroborated the extrajudicial confession.

v) Likewise, in *People v. Ordono*, *supra*., the taped interview taken by the DZNL radio announcer, offered as part of the testimony of the said announcer, where admissions were made by the accused who even expressed remorse for having committed the crime, was admitted in evidence. On the strength of such testimony, the accused were convicted. In *People v. Abulencia*, G.R. No. 138403, August 22, 2001, the confession made by the accused in a taped radio interview over Radio Bombo was held admissible in evidence, as "it was not shown that said reporter was acting for the police or that the interview was conducted under circumstances where it is apparent that the suspect confessed to the killing out of fear".

vi) Similarly, in *People v. Maingan*, G.R. No. 170470, September 26, 2008, the Court held that when the accused-appellant was brought to the barangay hall in the morning of January 2, 2001, he was already a suspect in the fire that destroyed several houses and killed the whole family of Roberto Separa, Sr., and thus, the confession of appellant given to the Barangay Chairman, as well as the lighter found by the latter in her bag, is inadmissible in evidence. But the testimony of Mercedita Mendoza, a neighbour of Roberto Separa, Sr., on the same confession, is admissible in evidence and is not covered by the exclusionary rule.

vii) In *People v. Suela*, G.R. No. 133570-71, January 15, 2002, the letter containing incriminatory statements was written when the accused was no longer under custodial investigation and, in open court, the accused admitted that he wrote it. The exclusionary rule will not apply to spontaneous statements not elicited through questioning by the authorities.

viii) In *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, it was held that an amicable settlement does not partake of the nature of an extrajudicial confession or admission, but is a contract between the parties within the parameters of their mutually recognized and admitted rights and obligations. Infractions of the Miranda rights render inadmissible only "the extrajudicial confession or admission made during custodial investigation". Aquino cannot later claim that the amicable settlement is inadmissible in evidence for violating her Miranda rights.

3. In *People v. Judge Ayson*, 175 SCRA 216, the Supreme Court said: In fine, a person suspected of having committed a crime and subsequently charged with its commission has the following rights in the matter of his testifying or producing evidence:

a) Before the case is filed in Court [or with the public prosecutor, for preliminary investigation], but after having been taken into custody or otherwise deprived of his liberty in some significant way, and on being interrogated by the police: the continuing right to remain silent and to counsel, and to be informed thereof, not to be subjected to force, violence, threat, intimidation or any other means which vitiates the free will; and to have evidence obtained in violation of these rights rejected and inadmissible.

b) After the case is filed in Court: to refuse to be a witness; not to have any prejudice whatsoever result to him by such refusal; to testify in his own behalf, subject to cross-examination; and while testifying, to refuse to answer a specific question which tends to incriminate him for some crime other than that for which he is being prosecuted.⁴⁵

4. *Applicability.* The Miranda doctrine was first institutionalized in the 1973 Constitution which took effect on January 17, 1973. The rights guaranteed therein are to be given only prospective effect [*Magtoto v.*

5. Waiver.

a) Must be in writing and made in the presence of counsel fSec. 12 (1), Art. III], See *People v. Tunday*, 157 SCRA 529; *People v. Quijano*, 197 SCRA 761. But note the provisions of R.A. 7438.

b) No retroactive effect. The doctrine that an uncounselled waiver of the right to counsel and to remain silent is not to be given any legal effect was initially a judge-made one, and was first announced on April 26, 1983, in *Morales v. Ponce Enrile*, and reiterated on March 20, 1985, in *People v. Galit*, 135 SCRA 465. While this doctrine eventually became part of Sec. 12 (1), Art. III, the requirements and restrictions therein have no retroactive affect and do not reach waivers made prior to April 26, 1983, the date of promulgation of *Morales* [*Filoteo v. Sandiganbayan*, 263 SCRA 222],

c) Burden of proof. The burden of proving that there was valid waiver rests on the prosecution. The presumption that official duty has been regularly performed cannot prevail over the presumption of innocence [*People v. Jara*, 144 SCRA 516; *People v. Taruc*, 157 SCRA 178]. Thus, in *People v. Paule*, 261 SCRA 649, where the police officer could not state positively whether the lawyer assisting the accused provided him with effective counsel during the crucial aspects of the investigation because the police officer went out of the investigation room and heard only snatches of the conversation between the lawyer and the accused — and the lawyer was not presented as witness during the trial — the Supreme Court held that the confession given by the accused was not admissible in evidence.

d) What may be waived: The right to remain silent and the right to counsel, but not the right to be informed of these rights.

6. *Guidelines for Arresting/Investigating Officers.* In *People v. Mahinay*, G.R. No. 122485, February 1, 1999, the Supreme Court laid down the guidelines and duties of arresting, detaining, inviting or investigating officers or his companions, as follows:

a) The person arrested, detained, invited or under custodial investigation must be informed in a language known to and understood by him of the reason for the arrest and he must be shown the warrant of arrest, if any. Every other warning, information or communication must be in a language known to and understood by said person.

b) . He must be warned that he has a right to remain silent and that any statement he makes may be used as evidence against him.

c) He must be informed that he has the right to be assisted at all times and have the presence of an independent and competent lawyer, preferably of his own choice.

d) He must be informed that if he has no lawyer or cannot afford the

rvices of a lawyer, one will be provided for him; and that a lawyer may also be engaged by any person in his behalf, or may be appointed by the Court upon petition of the person arrested or one acting in his behalf.

e) That whether or not the person arrested has a lawyer, he must be informed that no custodial investigation in any form shall be conducted except in the presence of his counsel or after a valid waiver has been made.

f) The person arrested must be informed that, at any time, he has the right to communicate or confer by the most expedient means, e.g., by telephone, radio, letter or messenger, with his lawyer (either retained or appointed), any member of his immediate family, or any medical doctor, priest or minister chosen by him or by anyone of his immediate family or by his counsel, or be visited by/confer with duly accredited national or international non-government organization. It shall be the responsibility of the officer to ensure that this is accomplished.

g) He must be informed that he has the right to waive any of said rights provided it is made voluntarily, knowingly and intelligently, and ensure that he understood the same.

h) In addition, if the person arrested waives his right to a lawyer, he must be informed that is must be done in writing and in the presence of counsel, otherwise, he must be warned that the waiver is void even if he insists on his waiver and chooses to speak.

i) The person arrested must be informed that he may indicate in any manner at any time or stage of the process that he does not wish to be questioned with a warning that once he makes such indication the police may not interrogate him if the same had not yet commenced, or the interrogation must cease if it has already begun.

j) The person arrested must be informed that his initial waiver of his right to remain silent, the right to counsel or any of his rights does not bar him from invoking it at any time during the process, regardless of whether he may have answered some questions or volunteered some statements.

k) He must also be informed that any statement or evidence, as the case may be, obtained in violation of any of the foregoing, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence.⁷

7. *Exclusionary Rule.* Confession or admission obtained in violation of Sec. 12 and Sec. 17, Art. III, shall be inadmissible in evidence. A *confession*

is a declaration made voluntarily and without compulsion or inducement by a person acknowledging that he has committed or participated in the commission of a crime. But before it can be admitted in evidence, the Constitution demands strict compliance with the requirements of *Secs. 12 and 17, Art. III*, because a confession of guilt constitutes formidable evidence against the accused, on the principle that no one will knowingly, freely and deliberately admit authorship of a crime unless prompted by truth and conscience, particularly where the facts given could only have been known by the accused [*People v. Fabro, G.R. No. 95089, August 11, 1997*]. It is immaterial where the confession was obtained. Thus, where the confession was given by the accused to NBI agents who visited him in a Hongkong prison, the confession was still declared inadmissible in evidence [*People v. Gomez, 270 SCRA 432*]. On the other hand, any allegation of force, duress, undue influence or other forms of involuntariness in exacting such confession must be proved by clear, convincing and competent evidence by the defense. Otherwise, the confession's full probative value may be used to demonstrate the guilt of the accused. See also *People v. Eglipa, 174 SCRA 1*; *People v. Basay, 219 SCRA 404*.

a) Fruit of the poisonous tree. In *People v. Alicando, 251 SCRA 293*, the Court declared that we have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree", a phrase minted by Mr. Justice Felix Frankfurter in the celebrated *Nardone v. U.S.*. According to this rule, once the primary source ("the tree") is shown to have been unlawfully obtained, any secondary or derivative evidence ("the fruit") derived from it is also inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence, because the originally illegally obtained evidence taints all evidence subsequently obtained. Thus, in this case, the uncounseled admission being inadmissible, the pillow and the T-shirt with alleged bloodstains — being evidence derived from the uncounseled confession — would, likewise, be inadmissible.

b) Receipt of seized property inadmissible. The Receipt of Seized Property signed by the accused without the assistance of counsel and with the accused not having been first informed of his constitutional rights is totally inadmissible in evidence [*People v. de Guzman, 194 SCRA 601*]. Thus, in *People v. Wong Chuen Ming, 256 SCRA 182*, where the accused were ordered to sign their baggage boxes by Customs agents, the admissions (signatures) were held to be inadmissible in evidence. In *People v. Saturnina Salazar, G.R. No. 98060, January 27, 1997*, where the suspect was made to sign a bond paper which was used to wrap the marijuana sticks before the same were submitted to the laboratory for examination, the Supreme Court held that this was in the nature of an uncounseled confession and therefore inadmissible in evidence. In *People v. de Lara, 236 SCRA 291*, it was held

that despite the valid warrantless arrest and search, as a result of a buy-bust operation, nonetheless, where the accused, insisting that he would like to wait for counsel, was made to sign the photocopy of the marked P20-bill, Receipt of Property Seized, and the Booking and Information Sheet, without assistance of counsel, there was clearly a violation of Sec. 12, Art. III, of the Constitution. Similarly, in *Marcelo v. Sandiganbayan*, G.R. No. 109242, January 26, 1999, where, during the investigation conducted by the NBI, the petitioner and his co-accused were made to sign on the envelopes seized from them (subject of the mail theft), the Supreme Court said that these signatures were actually evidence of admission contemplated in Secs. 12 and 17, Art. III, and they should be excluded. See also *Gutang v. People*, G.R. No. 135406, July 11, 2000; *People v. Casimiro*, G.R. No. 146277, June 20, 2002; and *People v. Benny Go*, G.R. No. 144639, September 12, 2003.

i) However, in *People v. Linsangan*, 195 SCRA 784, although the accused was not assisted by counsel when he initialled the P10 bills that the police found tucked in his waist, it was held that neither his right against self-incrimination nor his rights guaranteed by the Miranda doctrine was violated, because his possession of the marked bills did not constitute a crime, the subject of the prosecution being his act of selling marijuana cigarettes. Likewise, in *People v. Morico*, 246 SCRA 214, it was held that the signing of the Booking Sheet and the Arrest Report without the benefit of counsel does not violate the Constitution because it is not an admission of guilt.

c) Re-enactment of the crime. Not being clear from the record that before the re-enactment was staged by the accused, he had been informed of his constitutional rights, and that he had validly waived such rights before proceeding with the demonstration, the Supreme Court declined to uphold the admissibility of evidence relating to the re-enactment [*People v. Luvendino*, 211 SCRA 36].

d) Res gestae. The declaration of the accused acknowledging guilt made to the police desk officer after the crime was committed may be given in evidence against him by the police officer to whom the admission was made, as part of the *res gestae* [*People v. Dy*, 158 SCRA 111].

e) Waiver of the exclusionary rule. For failure of the accused to object to the offer in evidence, the uncounselled confession was admitted in evidence [*People v. Samus*, G.R. Nos.. 135957-58, September 17, 2002; *People v. Gonzales*, G.R. No. 142932, May 29, 2002].

N. Right to bail. [Sec. 13, Art. III]: “All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong,

shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required. ”]

1. *Bail* is the security given for the release of a person in custody of the law, furnished by him ora bondsman, conditioned upon his appearance before any court as may be required [*Rule 114, Sec. 1, Rules of Court*], The right to bail emanates from the right to be presumed innocent.

2. *When right may be invoked; by whom.* The right to bail emanates from the right to be presumed innocent. It is accorded to a person in custody of the law who may by reason of the presumption of innocence he enjoys, be allowed provisional liberty upon filing a security to guarantee his appearance before any court, as required under specific circumstances [*People v. Fitzgerald, G.R. No. 149723, October 27, 2006*]. Any person under detention, even if no formal charges have yet been filed, can invoke the right to bail [*Teehankee v. Rovira, 75 Phil 634; People v. San Diego, 26 SCRA 522*]. However, it is a basic principle that the right to bail can be availed of only by a person who is in custody of the law or otherwise deprived of his liberty, and it would be premature, not to say incongruous, to file a petition for bail for someone whose freedom has yet to be curtailed [*Cortes v. Judge Catral, infra*]. See Rule 114, Rules of Court which provides, among others, that “any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held”.

a) In *Enrile v. Salazar, 186 SCRA 217*, where the petitioners were charged with rebellion complexed with murder and multiple frustrated murder, the Court ruled that based on the doctrine enunciated in *People v. Hernandez*, the questioned information filed against the petitioners must be read as charging simple rebellion only; hence the petitioners are entitled to bail before final conviction as a matter of right. In *People v. Judge Donato, 198 SCRA 130*, it was held that the right to bail cannot be denied one who is charged with rebellion, a bailable offense. In *Al-Ghoulv. Court of Appeals, G.R. No. 126859, September 01, 2001*, since the penalty for illegal possession of firearms had been reduced to less than reclusion perpetua, the petitioners were deemed entitled to bail as a matter of right before their conviction by the trial court.

b) In *Lavides v. Court of Appeals, G.R. No. 129670, February 1, 2000*, the Supreme Court held that the trial court was in error when the latter required the arraignment of the accused as a prerequisite to the approval of the bail bond. In the cases when bail is authorized, it should be granted before arraignment, otherwise, the accused may be precluded from filing a

motion to quash. Furthermore, the court would be assured of the presence of the accused at the arraignment precisely by granting bail and ordering his presence at any stage of the proceeding.

3. Exceptions.

a) When charged with an offense punishable by reclusion perpetua for higher) and evidence of guilt is strong. In *Carpio v. Judge Maglalang*, 196 SCRA 41, the Supreme Court said that where the accused is charged, with an offense punishable by reclusion perpetua, it is the duty of the judge to determine if evidence of guilt is strong for purposes of deciding whether bail may be granted or not. In *People v. Fortes*, and *Fortes v. Judge Guam* 223 SCRA 619, it was held that if an accused who is charged with a crime? punishable by preclusion perpetua is convicted by the trial court and sentenced to suffer such a penalty, bail is neither a matter of right on the part of the accused nor a matter of discretion on the part of the court; an application for bail must be denied. In *People v. Reyes*, 212 SCRA 402, the Supreme Court held that where a person has been convicted by the trial court and sentenced to the penalty of imprisonment for 22 years, the penalty imposed is classified as reclusion perpetua; and while the case is on appeal, bail may be denied, because the offense is punishable by reclusion perpetua and the evidence of guilt is strong.

b) Traditionally, the right to bail is not available to the military. In *Comendador v. de Villa*, 200 SCRA 80, it was held that traditionally, the right to bail has not been recognized and is not available to the military, as an exception to the Bill of Rights. This much was suggested in *Arula v. Espino*, 28 SCRA 540, where the Court observed that "the right to speedy trial is given more emphasis in the military where the right to bail does not exist". The denial; of the right to bail to the military does not violate the equal protection clause because there is substantial distinction between the military and civilians.

4. *Duty of the Court* when accused is charged with an offense punishable by reclusion perpetua or higher: A hearing on the motion for bail must be conducted by the judge to determine whether or not the evidence of guilt is strong. Whether the motion is resolved in summary proceedings or in the course of regular trial, the prosecution must be given an opportunity to present all the evidence that it may wish to introduce on the probable guilt of the accused before the court resolves the motion for bail. Even if the prosecution refuses to adduce evidence, or fails to interpose an objection to the motion for] bail, it is still mandatory for the court to conduct a hearing, or ask searching and clarificatory questions from which it may infer the strength of the evidence of guilt, or lack of it, against the accused [*Baylon v. Judge Sison*, 243 SCRA 284; *Marallag v. Judge Cloribel. A.M. No. 00-1529-RTJ, April 09, 2002*].

a) In *Tucay v. Judge Domagas*, 242 SCRA 110, the Court found the Judge to have violated the Rules of Court, because although the Provincial Prosecutor interposed no objection to the petition for bail filed by the accused, it was still incumbent upon the Judge to set the petition for hearing and diligently ascertain from the prosecution whether the latter was not really contesting the bail application. In *Delos Santos-Reyes v. Judge Montesa*, 247 SCRA 85, the Court sanctioned the Judge who, after examining the records of the cases forwarded to him by the prosecution, and after finding the existence of probable cause, instead of issuing the corresponding warrants of arrest for the purpose of acquiring jurisdiction over the persons of the accused, ex *mero motu* granted bail to the accused despite the absence (because of prior withdrawal) of a petition for bail; and worse, the lack of hearing wherein the prosecution could have been accorded the right to present evidence showing that the evidence of guilt was strong. In *Buzon v. Judge Velasco*, 253 SCRA 601, the Court reiterated the rule that bail is not a matter of right in cases where the offense for which the accused stands charged is punishable by reclusion perpetua when the evidence of guilt is strong. While it is true that the weight of the evidence adduced is addressed to the sound discretion of the court, such discretion may be exercised only after the hearing called to ascertain the degree of guilt of the accused. At the hearing, the court should assure that the prosecution is afforded the opportunity to adduce evidence relevant to the factual issue, with the applicant having the right of cross-examination and to introduce his own evidence in rebuttal. Without a hearing, the judge could not possibly assess the weight of the evidence against the accused before granting the latter's application for bail. In *Basco v. Judge Rapatalo*, A.M. No. RTJ-96- 1335, March 5, 1997, the Supreme Court reiterated that in the application for bail of a person charged with a capital offense punishable by death, reclusion perpetua or life imprisonment, a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not evidence of guilt against the accused is strong. See also *People v. Manes*, G.R. No. 122737, February 17, 1999; *Tabao v. Judge Espina*, A.M. RTJ-96-1347, June 29, 1999; *Marzan-Gelacio v. Judge Flores*, A.M. RTJ-99- 1498]. . .

b) The hearing on a petition for bail need not at all times precede arraignment, because the rule is that a person deprived of his liberty by virtue of his arrest or voluntary surrender may apply for bail as soon as he is deprived of his liberty, even before a complaint or information is filed against him. When bail is a matter of right, the accused may apply for and be granted bail even prior to arraignment. Even when the charge is a capital offense, if the court finds that the accused is entitled to bail because the evidence of guilt

is not strong, he may be granted provisional liberty even before arraignment [*Serapio v. Sandiganbayan, supra*]. In *Lavides v. Court of Appeals, infra.*, the accused filed a petition for bail as well as a motion to quash, and the Court said that in cases where it is authorized, bail should be granted before arraignment, otherwise the accused may be precluded from filing a motion to quash.

c) The court's order granting or refusing bail must contain a summary of the evidence for the prosecution [*People v. Judge Cabral, G.R. No. 131909, February 18, 1999*]. The assessment of the evidence presented during a bail hearing is intended only for the purpose of granting or denying an application for the provisional release of the accused. Not being a final assessment, courts tend to be liberal in their appreciation of evidence. But it is not an uncommon occurrence than an accused person granted bail is convicted in due course [*People v. Palarca, G.R. No. 146020 May 29 2002*].

5. *Bail is either a matter of right, or at the judge's discretion, or it may be denied [Rule 114, Rules of Court],*

a) Bail, a matter of right. All persons in custody shall [i] before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court, and [ii] before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or this Rule [*Sec. 4, Rule 114*].

b) Bail, when discretionary. Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, the court, on application, may admit the accused to bail. The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period to appeal subject to the consent of the bondsman. If the court imposed a penalty of imprisonment exceeding six years but not more than twenty years, the accused shall be denied bail, or his bail previously granted shall be cancelled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances: [i] that the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration; [ii] that the accused is found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of his bail without valid justification; [iii] that the accused committed the offense while on probation, parole, or under conditional pardon; [iv] that the circumstances

of the accused or his case indicate the probability of flight if released on bail; or [v] that there is undue risk that during the pendency of the appeal, the accused may commit another crime [*Sec. 5, Rule 114*].

i) However, whether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor, or at least he must be asked for his recommendation, because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicant's character and reputation, forfeiture of other bonds, etc. [*Cortes v. Judge Catral, AM. No. RTJ-97-1387, September 10, 1997*], This was reiterated in *Taborite v. Sollesta, A.M. No. MTJ-02-1388, August 12, 2003*, that granting bail in non-bailable offenses without a hearing is gross ignorance of the law, and the judge was subjected to a fine of P20,000.00.

c) When bail shall be denied. When the accused is charged with a capital offense, or an offense punishable by reclusion perpetua or higher and evidence of guilt is strong, then bail shall be denied, as it is neither a matter of right or of discretion [*Padilla v. Court of Appeals, 260 SCRA 155*], Thus, in *Trillanes IV v. Pimentel, G.R. No. 179817*, where Senator Antonio Trillanes, charged with *coup d' etat*, sought to be allowed to attend senate sessions and to convene his staff, resource persons and guests and to attend to his official functions as senator, the Supreme Court denied the petition. The petitioner's contention that he is not a flight risk is irrelevant as it is only material in ascertaining the amount of bail and in cancelling a discretionary grant of bail. In this case, where the offense charged is a non-bailable offense, what is controlling is the determination by the trial court that the evidence of his guilt is strong. It is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security, and while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights limited than those of the public. The presumption of innocence does not carry with it full enjoyment of civil and political rights.ⁱ⁾

i) Where the accused is charged with a crime punishable by reclusion perpetua and is convicted by the trial court and sentenced to suffer such a penalty, bail is neither a matter of right nor a matter of discretion; an application for bail must be denied [*People v. Fortes, 223 SCRA 619*]. Likewise, in *People v. Reyes, 212 SCRA 402*, the Supreme Court held that where a person has been convicted by the trial court and sentenced to the penalty of imprisonment for 22 years, the penalty imposed is classified as reclusion perpetua, and while the case is on appeal, bail shall be denied because the offense is punishable by reclusion perpetua and the evidence of guilt is strong. In *Obosa v. Court of Appeals, 266 SCRA*

denying bail to an accused charged with a capital offense where evidence of guilt is strong, applies with equal force to the appellant who, though convicted of an offense not punishable by death, reclusion perpetua or life imprisonment, was nevertheless originally charged with a capital offense.

6. *Standards for fixing bail.* In Sec. 6, Rule 114, Rules of Court, among the factors to be considered by the judge in fixing bail are the financial ability of the accused, the nature and circumstances of the offense, the penalty for the offense charged, the character and reputation of the accused, his age and health, the weight of the evidence against him, the probability of his appearing at the trial, the forfeiture of other bonds by him, the fact that he was a fugitive from justice when arrested, and the pendency of other cases in which he is under bond. See *de la Camara v. Enage*, 41 SCRA 1; *Villasenor v. Abano*, 21 SCRA 312. In *Yap v. Court of Appeals*, *supra*., the bail of P5.5- million recommended by the Solicitor General for the provisional liberty of the accused who had already been convicted by the trial court in an estafa case, was held to be excessive, as bail is not intended to assume the civil liability of the accused.

7. *Right to bail and right to travel abroad.* See *Manotoc v. Court of Appeals*, *supra*; *Silverio v. Court of Appeals*, *supra*; *Defensor-Santiago v. Vasquez*, *supra*.⁸

8. *Right to bail and extradition.* In *Government of the U.S. v. Judge Puruganan and Mark Jimenez*, G.R. No. 148571, December 17, 2002, the Supreme Court denied with finality Mark Jimenez's motion for reconsideration of the court's earlier decision to declare null and void the order of Judge Puruganan granting bail to Mark Jimenez. The court said that, as suggested by the use of the word "conviction", the constitutional provision on bail applies only when a person has been arrested and detained for violation of Philippine criminal laws. It does not apply to extradition proceedings, because extradition courts do not render judgments of conviction or acquittal. Moreover, the constitutional right to bail "flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal unless his guilt be proved beyond reasonable doubt". It follows that the constitutional provision on bail will not apply to a case of extradition where the presumption of innocence is not an issue. That the offenses for which Jimenez is sought to be extradited are bailable in the United States is not an argument to grant him one in the present case. To stress, extradition proceedings are separate and distinct from the trial for the offenses for which he is charged. He should apply for bail before the courts trying the criminal cases against him, not before the extradition court. Accordingly, it was held

placed under the custody of the law, bail may be applied for and granted as an exception, only upon a clear and convincing showing that (a) once granted bail, the applicant will not be a flight risk or a danger to the community, and (b) there exist special, humanitarian and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases therein.

a) This ruling in *Puruganan* was modified in *Government of HongKong v. Hon. Felixberto T. Olalia, Jr., G.R. No. 153675, April 19, 2007*, where the Court said that it cannot ignore the modern trend in public international law which places a primacy on the worth of the individual person and the sanctity of human rights. While the Universal Declaration of Human Rights is not a treaty, its principles are now recognized as customarily binding upon the members of the international community. This Court, in *Mejoff v. Director of Prisons*, in granting bail to a prospective deportee, held that under the Constitution the principles set forth in the Universal Declaration of Human Rights are part of the law of the land. If bail can be granted in deportation cases, considering that the Universal Declaration of Human Rights applies to deportation cases, there is no reason why it cannot be invoked in extradition cases.

i) Consistent with the separate opinion of Chief Justice Puno in *Puruganan*, a new standard, "clear and convincing evidence", should be used in granting bail in extradition cases. The standard is lower than proof beyond reasonable doubt, but higher than preponderance of evidence. The potential extradite must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court.

9. *Waiver of the right to bail.* The right to bail is another of the constitutional rights which can be waived. It is a right which is personal to the accused and whose waiver would not be contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law [*People v. Judge Donato, 198 SCRA 130*],

a) The failure of the accused to call the attention of the trial court to the unresolved petition for bail is deemed a waiver of the right to bail. Furthermore, the conviction of the accused renders the petition for bail moot and academic [*People v. Manes, G.R. No. 122737, February 17, 1999*],

10. *Bail and suspension of the privilege of the writ of habeas corpus.* The right to bail is not impaired by the suspension of the privilege of the writ of habeas corpus [Sec. 13, Art. III].

O. *Constitutional Rights of the Accused.* fSec. 14, Art. III: "(1) No person

shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused, provided that he has been duly notified and his failure to appear is unjustifiable.]

. 1. Criminal due process

a) In *Mejia v. Pamaran*, 160 SCRA 457, the Supreme Court enumerated the ingredients of due process as applied to criminal proceedings, as follows: (i) The accused has been heard in a court of competent jurisdiction; (ii) The accused is proceeded against under the orderly processes of law; (iii) The accused has been given notice and the opportunity to be heard; and (iv) The judgment rendered was within the authority of a constitutional law.

b) *Unreasonable delay in resolving complaint.* In *Roque v. Ombudsman*, G.R. No. 129978, May 12, 1999, it was held that the failure of the Office of the Ombudsman to resolve a complaint that had been pending for six years clearly violates the constitutional command for the Ombudsman to act promptly on complaints and the right of the petitioner to due process of law and to speedy trial. In such event, the aggrieved party is entitled to the dismissal of the complaint. A similar ruling was made in *Cervantes v. Sandiganbayan*, G.R. No. 108595, May 18, 1999, and in *Tatad v. Sandiganbayan*, 159 SCRA 70, where it was held that the unreasonable delay in the termination of the preliminary investigation by the Tanodbayan violated the due process clause.

i) However, in *Santiago v. Garchitorena*, 228 SCRA 214, although the offense was allegedly committed on or before October 17, 1988 and the information was filed only on May 9, 1991, and an amended information filed on December 8, 1992, the delay did not constitute a denial of due process, because there was continuing investigation, snarled only because of the complexity of the issues involved. In *Socrates v. Sandiganbayan*, 253 SCRA 559, it was found that the six-year delay in the termination of the preliminary investigation was caused by petitioner's own acts, not by inaction of the prosecution. Accordingly, there was no violation of the petitioner's right to due process of law or of his right to speedy disposition of the case.

c) *Impartial court or tribunal.* A critical component of due process of law is a hearing before an impartial and disinterested tribunal. In order

to disqualify a judge on the ground of bias and prejudice, the movant must prove such bias by clear and convincing evidence. In this case, the petitioners failed to adduce any extrinsic evidence to prove that the respondent judge was motivated by malice or bad faith when she issued the assailed rulings [*Webb v. People*, G.R. No. 127262, July 24, 1997].

i) In *Imelda Romualdez Marcos v. Sandiganbayan*, G.R. No. 126995, October 6, 1998, the Supreme Court, reiterating its ruling in *Tabuena v. Sandiganbayan*, 268 SCRA 332, declared that the cross-examination of the accused and the witnesses by the trial court indicated bias, and thus violated due process.

ii) But where the questions propounded by the court are merely for clarification, to clear up dubious points and elicit relevant evidence, such questioning will not constitute bias [*People v. Castillo*, 289 SCRA 213; *Cosep v. People*, 290 SCRA 378; *People v. Galleno*, 291 SCRA 761]. Thus, in *People v. Herida*, G.R. No. 127158, March 5, 2001, where the trial court intensively questioned the witnesses and the accused {approximately 43% of the questions asked of the prosecution witnesses and the accused were propounded by the judge}, it was held that the questioning was necessary. Judges have as much interest as counsel in the orderly and expeditious presentation of evidence and have the duty to ask questions that would elicit the facts on the issues involved, clarify ambiguous remarks by witnesses, and address the points overlooked by counsel. See also *People v. Medenilla*, G.R. No. 131638-39, March 26, 2001.

d) *Right to a hearing*. In *Alonte v. Savellano*, G.R. No. 131652, March 9, 1998, and in *Concepcion v. Savellano*, G.R. No. 131728, March 9, 1998, the Supreme Court held that the accused were denied due process of law when the trial court convicted them (after having declared that they had waived their right to present evidence), but it was shown that there were deviations from the regular course of trial, e.g., petitioners were not directed to present evidence to prove their defenses nor dates set for that purpose, petitioners were not given an opportunity to present rebuttal evidence nor dates set for that purpose, and petitioners had not admitted the offense charged in the information which would have justified any modification in the order of the trial. In *Defensor- Santiago v. Sandiganbayan*, G.R. No. 123792, March 8, 1999, it was held that the re-opening of a case without giving the accused the opportunity to introduce controverting evidence is an error and a denial of due process of law.

e) In *People v. Hubert Webb*, G.R. No. 132577, August 17, 1999, the Supreme Court said that there was no denial of due process where the trial

court refused to grant the petition of Webb to take the deposition of witnesses residing abroad, considering that the testimony of the witnesses would be merely corroborative, the defense had already presented 57 witnesses and 464 documentary exhibits, and the trial court had already admitted the exhibits on which the said witnesses would have testified.

f) In *Joseph Ejercito Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, RA 7080 (Plunder Law), as amended by RA 7659, was challenged on the following grounds: [1] it is vague; [2] it dispenses with the "reasonable doubt" standard in criminal prosecutions; and (3) it abolishes the element of *mens rea* in crimes already punishable under the Revised Penal Code; all of which are purportedly violations of the right of the accused to due process of law and to be informed of the nature and the cause of the accusation against him. The Court ruled that every legislative measure is presumed constitutional, and the petitioner failed to discharge the burden to overcome the presumption of constitutionality: [1] The law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of the violation. Sec. 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. [2] Sec. 4 does not circumvent the immutable obligation of the prosecution to prove beyond reasonable doubt the predicate acts showing unlawful scheme or conspiracy. The prosecution has to prove beyond reasonable doubt the number of acts sufficient to form a combination or a series which would constitute a pattern involving an amount no less than P50-million. [3] The legislative declaration in RA 7659 that plunder is a heinous offense implies that it is *malum in se*. If the acts punished are inherently immoral or inherently wrong, they are *mala in se* even if punished under special laws, particularly because in plunder the predicate crimes are mainly *mala in se*.

g) Plea of guilt to a capital offense. In *People v. Sta. Teresa*, G.R. No. 130663, March 20, 2001, the Court enumerated the stringent constitutional standards impelled by the due process clause whenever the accused pleads guilty to a capital offense, viz: [1] The trial court must conduct a searching inquiry into the voluntariness of the plea and the full comprehension of the consequences thereof; [2] The prosecution shall be required to present evidence to prove the guilt of the accused and the precise degree of his culpability; and [3] The accused must be asked if he desires to present evidence on his behalf and allow him to do so if he so desires. In *People v. Ostia*, G.R. No. 131804, February 26, 2003, the Supreme Court said that the procedure is mandatory, and a judge who fails to observe with fealty the said rule commits grave abuse of discretion. The Court has cautioned trial judges to proceed with meticulous care whenever the imposable penalty for the crime charged is death.

h) *The State and the offended party are entitled to due process.* The State, and more so, the offended party, is also entitled to due process of law. In *Galman v. Pamaran*, 138 SCRA 274, the judgment of acquittal was vacated upon a finding by the Supreme Court that there was bias and partiality on the part of the judge and the prosecutor. In *Merciales v. Court of Appeals*, G.R. No. 124171, March 18, 2002, it was held that the petitioner (mother of the victim in a rape with homicide case) was denied due process when the public prosecutor, who was under legal obligation to pursue the action on her behalf, reneged on that obligation and refused to perform his sworn duty. But, in *People v. Verra*, G.R. No. 134732, May 29, 2002, it was held that the People could not claim that it was denied due process, because there was a public prosecutor who represented it at every stage of the proceedings — from arraignment to promulgation of the dismissal order — to protect its interest.

2. Presumption of innocence.

a) Every circumstance favoring the innocence of the accused must be taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment [*People v. Austria*, 195 SCRA 700]. Thus, in *Dumlao v. Comelec*, 95 SCRA 392, the provision of an election statute which disqualified from running for public office any person who has committed any act of disloyalty to the State “provided that the filing of charges for the commission of such crimes before a civil court or military tribunal shall be prima facie evidence of such fact”, was declared unconstitutional for being violative of the presumption of innocence clause. Likewise, in *People v. Lomboy*, G.R. No. 129691, June 29, 1999, it was held that the acquittal of the accused is inevitable if inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt.

b) The presumption of innocence was held not to have been overcome by prosecution evidence where the victim had difficulty in identifying the accused not only during the hospital confrontation but also in open court [*People v. Alcantara*, 240 SCRA 122]; or where the prosecution failed to present the alleged poseur-buyer, because without the testimony of the latter, there is no convincing evidence that the accused was a marijuana peddler and not merely a victim of instigation [*People v. Tapeda*, 244 SCRA 339]; or where the testimony of the prosecution witnesses is marred by inconsistencies [*Layug v. Sandiganbayan*, 245 SCRA 123].

c) The presumption that official duty was regularly performed cannot, by itself, prevail over the constitutional presumption of innocence. If the

inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused, and the other consistent with guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction [*People v. Martos*, 211 SCRA 805]. Thus, in *People v. Briones*, 266 SCRA 254, the fact that SP01 Alilio was presumed to have regularly performed his official duty was held insufficient to overcome the presumption of innocence, as it was inconceivable that the accused would still sell shabu to SP01 Alilio when the accused knew Alilio to be the police officer who earlier arrested his friend, Ormos, for allegedly selling shabu.

i) But where it is not the sole basis for conviction, the presumption of regularity of performance of official functions may prevail over the constitutional presumption of innocence [*People v. Acuram*, 209 SCRA 281].

d) The constitutional presumption will not apply as long as there is some logical connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. In such a case the burden of proof is thus shifted to the possessor of the dangerous drug to explain the absence of *animus possedendi* [*People v. Burton*, 268 SCRA 531, citing *Dizon-Pamintuan v. People*, 234 SCRA 63]. This is reiterated in *People v. Balluda*, G.R. No. 114198, November 19, 1999.

e) This constitutional presumption may be overcome by contrary presumptions based on the experience of human conduct, such as unexplained flight which may lead to an inference of guilt, or the inability of an accountable officer to produce funds or property entrusted to him which is considered *prima facie* evidence of misappropriation.

i) However, in *Madarang v. Sandiganbayan*, G.R. No. 112314, March 28, 2001, and in *Agullo v. Sandiganbayan*, G.R. No. 132926, July 20, 2001, it was held that the *prima facie* presumption of accountability does not shatter the presumption of innocence which the petitioner enjoys, because even if *prima facie* evidence arises, certain facts still have to be proved, and the Sandiganbayan must be satisfied that the petitioner is guilty beyond reasonable doubt. And this finding must rest upon the strength of the prosecution's own evidence, not on the weakness, deficiency or absence of evidence for the defense. In *Monteverde v. People*, G.R. No. 139610, August 12, 2002, it was held that the presumption that the possessor of a forged or falsified document is the author of the forgery or falsification will not prevail over the presumption of innocence.

f) In *Ong v. Sandiganbayan*, G.R. No. 126858, September 16, 2005,

the constitutionality of R.A. 1379 (Forfeiture of Unlawfully Acquired Property) was challenged because it is vague, violates the presumption of innocence and the right against self-incrimination, and breaches the authority of the Supreme Court to promulgate rules concerning the protection and enforcement of constitutional rights. It was held that the law is not vague, because it defines with sufficient particularity "unlawfully acquired property", and provides a definition of what is legitimately acquired property. Neither is the presumption of innocence by Sec. 2 thereof, which states that property acquired by a public officer during his incumbency in an amount which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property shall be *prima facie* presumed to have been unlawfully acquired. The Court held that under the principle of presumption of innocence, it is merely required that the State establish a *prima facie* case, after which the burden of proof is shifted to the accused.

g) *Circumstantial evidence.* In *People v. Bato*, G.R. No. 113804, January 16, 1998, the Supreme Court held that in order that circumstantial evidence may warrant conviction, the following requisites must concur: [i] there is more than one circumstance; [ii] the facts from which the inferences are derived are proven; and [iii] the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Thus, where the conviction is based on circumstantial evidence gleaned from the sole testimony of the son of the deceased, the prosecution evidence does not constitute an unbroken chain leading, beyond reasonable doubt, to the guilt of the accused and, therefore, cannot overthrow the constitutional presumption of innocence.

h) *Equipoise rule.* The *equipoise rule* invoked by the petitioner is applicable only where the evidence adduced by the parties are evenly balanced, in which case the constitutional presumption of innocence should tilt the scales in favor of the accused [*Corpus v. People*, 194 SCRA 73].

i) The right to presumption of innocence can be invoked only by an individual accused of a criminal offense; a corporate entity has no personality to invoke the same [*Feeder International Line v. Court of Appeals*, 197 SCRA 842].³

3. *Right to be heard by himself and counsel.* The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. It is more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. It means that the accused is amply accorded legal assistance extended by a counsel who

defense and acts accordingly. Tensely put, it means an efficient and truly decisive legal assistance, and not simply a perfunctory representation [*People v. Bermas, G.R. No. 120420, April 21, 1999*]. In *Estrada v. Badoy, A.M. No. 01-12-01-SC, January 16, 2003*, the Supreme Court said that a PAO lawyer is considered an independent counsel within the contemplation of the Constitution since he is not a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused.

a) *The right to counsel during the trial is not subject to waiver [Flores v. Ruiz, 90 SCRA 428]*, because “even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence” [*People v. Holgado, 86 Phil 752*]. Thus, the conviction of the accused in the lower court was set aside and the case remanded for new trial, as the accused was represented by someone who was not a member of the Philippine Bar [*People v. Santociles, G.R. No. 109149, December 21, 1999*]. But the failure of the record to disclose affirmatively that the trial court advised the accused of his right to counsel is not sufficient ground to reverse conviction. The trial court must be presumed to have complied with the procedure prescribed by law for the hearing and trial of cases, and such presumption can be overcome only by an affirmative showing to the contrary [*People v. Agbayani, G.R. No. 122770, January 16, 1998*].

b) The decision of conviction was set aside where it appeared that there was merely a *pro forma* appointment of a counsel de officio who did not exert his best efforts for the protection of the accused [*People v. Magsi, 124 SCRA 64*]. Where the accused manifested that he had lost confidence in his counsel de officio and wanted to retain a counsel de parte, but the court still appointed the same lawyer as counsel de officio, and proceeded with the trial, there was deemed a denial of this constitutional guarantee [*People v. Malunsing, 63 SCRA 493*]. Likewise, in *People v. Cuizon, 256 SCRA 325*, where the accused, a Cantonese, could not understand English, Pilipino or any Philippine dialect, it was held that he was denied the right to counsel because although he was provided with one, he could not understand or communicate with his counsel concerning his defense.

c) Although the right to counsel is not indispensable to due process of law [*Feeder International Line v. Court of Appeals, supra*], there are instances when the Constitution and/or the laws provide that the same may not be waived. Thus, the accused cannot waive the right during the trial, and no valid waiver of the right to remain silent or to counsel can be made by a person under

custodial interrogation without the assistance of counsel. However, while the right to be represented by counsel during the trial is absolute, the option of the accused to hire one of his own choice is limited. Such option cannot be used to sanction reprehensible dilatory tactics, to trifle with the Rules of Court, or to prejudice the equally important rights of the State and the offended party to speedy and adequate justice [*People v. Serzo*, G.R. No. 118435, June 20, 1997].

d) An examination of related provisions in the Constitution concerning the right to counsel will show that the “preference in the choice of counsel” pertains more aptly and specifically to a person under custodial investigation rather than one who is accused in criminal prosecution. And even if the application of the concept were to be extended to an accused in a criminal prosecution, such preferential discretion cannot partake of discretion so absolute and arbitrary as would make the choice of counsel refer exclusively to the predilection of the accused. Thus, there is no denial of the right to counsel where the counsel de officio was appointed during the absence of the accused’s counsel de parte pursuant to the court’s desire to finish the case as early as possible under the continuous trial system [*Amion v. Judge Chiongson*, A.M. No. RTJ-97-1371, January 22, 1999]. This is reiterated in *People v. Rivera*, G.R. No. 139180, July 31, 2001.

e) The long standing rule is that a client is bound by the mistakes of his lawyer [*Andrade v. People*, G.R. No. 135222, March 4, 2005], except when the negligence or incompetence of counsel is deemed so gross as to have prejudiced the constitutional right of the accused to be heard. Thus, in *U.S. v. Gimenez*, 34 Phil. 74, the case was remanded for new trial when counsel for the accused inadvertently substituted a plea of guilty for an earlier plea of not guilty, thus resulting in the precipitate conviction of his client. In *Aguilar v. Court of Appeals*, 320 Phil. 456, the dismissed appeal from a conviction for estafa was reinstated after it was shown that the failure to file the appellant’s brief on time was due to the sheer irresponsibility on the part of appellant’s counsel. In *De Guzman v. Sandiganbayan*, G.R. No. 103276, April 11, 1996, the case was remanded for reception of evidence after counsel filed a demurrer to the evidence notwithstanding that his motion for leave of court was denied, thus precluding the accused to present his evidence. In *Reyes v. Court of Appeals*, G.R. No. 111682, February 6, 1997, a new trial was ordered after a showing that counsel for the accused abandoned the accused without explanation. In *People v. Bascuguin*, G.R. No. 144404, September 4, 2001, it was held that the counsel de officio’s haste in proceeding with the arraignment falls short of the standard mandated by the rules of effective and adequate counselling.⁴

4. Right to be informed of the nature and cause of the accusation against him.

a) Rationale. In *People v. Valdesancho*, G.R. No. 137051-52, May 30, 2001, reiterated in *People v. Monteron*, G.R. No. 130709, March 06, 2002, the Supreme Court said that the reasons for this guarantee, as explained in *US v. Karlsen*, are: [1] to furnish the accused with such a description of the charge against him as will enable him to prepare for his defense; [2] to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and [3] to inform the Court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction.

i) In *People v. Crisologo*, 150 SCRA 653, the conviction of the accused who was a deaf-mute was reversed by the Supreme Court because no one who knew how to communicate with the accused was utilized by the trial court during the entire proceedings. Similarly, in *People v. Parazo*, G.R. No. 121176, July 8, 1999, the judgment of conviction rendered by the trial court was vacated where there was no showing that the accused, a deaf-mute, was aided by a competent sign language expert able to fully understand and interpret the actions and mutterings of the appellant. See also *People v. Ramirez*, 69 SCRA 144; *People v. Montes*, 122 SCRA 409.

ii) Settled is the rule that when a judge is informed or discovers that an accused is apparently in a condition of insanity or imbecility, it is within his discretion to investigate the matter. If it be found that by reason of such affliction the accused could not, with the aid of counsel, make a proper defense, it is the duty of the court to suspend proceedings and commit the accused to a proper place of detention until he recovers his faculties. To arraign the accused while he is in a state of insanity will violate the right of the accused to be informed of the nature and cause of the accusation against him [*People v. Alcalde*, G.R. Nos. 139225-26, May 29, 2002].

b) Requisites. In order that the constitutional right of the accused to be informed of the nature and cause of the accusation against him may not be violated, the information must state the name of the accused, the designation given to the offense by statute, a statement of the acts or omission so complained of as constituting the offense, the name of the offended party, the approximate time and date of the commission of the offense and the place where the offense had been committed. The information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that the accused can prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more persons is conspiracy. Where no such allegation is made in the information, the court's finding of conspiracy violates the constitutional requirement [*People v. Quitlong*, G.R. No. 121502, July 10, 1998]. Every element of the offense must be alleged in the complaint or information, because the accused is presumed

to have no independent knowledge of the facts that constitute the offense charged [*People v. Tabion, G.R. No. 132715, October 20, 1999*],

i) But it is not necessary to state in the complaint or information the precise time when the offense was committed, except when time is a material ingredient of the offense. The act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit [*People v. Marcelo, G.R. No. 126714, March 22, 1999*]. This rule was reiterated in *People v. Alba, G.R. Nos. 131858-59, April 15, 1999* and in *People v. Flores, Jr., G.R. No. 12882324, December 27, 2002*, where it was held that the exact date the rape was committed is not an element of the crime.

ii) Due process requires that the acts or omissions constitutive of the offense must be stated in the information to fully apprise the accused of the charge against him [*People v. Garcia, 281 SCRA 463; People v. Bolatete, G.R. No. 127570, February 25, 1999*]. The nature and the cause of the accusation must be reasonably stated in the information [*People v. Ambray, G.R. No. 127177, February 25, 1999*]. Thus, in *People v. Puertollano, G.R. No. 122423, June 17, 1999*, where the information (for rape) failed to allege the victim's exact age, it was held that the imposition of the death penalty was not warranted, considering that for the imposition of the death penalty the special qualifying circumstance of the victim's age and her relationship to the offender must be alleged. Likewise, in *People v. Bonghanoy, G.R. No. 124097, June 17, 1999*, because the information failed to allege the relationship between the accused and the victim, the death penalty was not imposed. See also *People v. De la Cuesta, G.R. No. 126134, March 2, 1999*.

iii) The description not the designation of the offense controls [*Soriano v. Sandiganbayan, 131 SCRA 184; Santos v. People, 181 SCRA 487; Pecho v. People, 262 SCRA 918*]. The accused can be convicted only of the crime alleged or necessarily included in the allegations in the information [*People v. Legaspi, 246 SCRA 206*]. Thus, in *People v. Paglinawan, G.R. No. 123094, January 31, 2000*, where during the trial for murder, it was shown that the mother and the brother of the victim were also injured during the same incident, it was held that the accused-appellant could not be convicted of the said injuries because they were not properly charged in the information.

iv) While the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it cannot convict the accused of the complex crime constitutive of the various crimes in the two informations. To do so would violate the right of the accused to be informed of the nature and the cause of the accusation against him [*People v. De Vera, G.R. Nos. 121462-63, June 9, 1999*].

c) Void for Vagueness Rule: The accused is also denied the right to be informed of the charge against him, and to due process as well, where the statute itself is couched in such indefinite language that it is not possible for men of ordinary intelligence to determine therefrom what acts or omissions are punished. In such a case, the law is deemed void. See *Joseph Ejercito Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001.

i) In *Romualdez v. Sandiganbayan*, 435 SCRA 371, the petitioner argued that Sec. 5 of the Anti-Graft and Corrupt Practices Act — which penalizes any relative by consanguinity or affinity within the third civil degree of the President who intervenes in any business or contract with the Government — is void for being vague. The Supreme Court said that the term “intervene” should be understood in its ordinary acceptance, which is “to come between”. The challenged provision is not vague.

d) Waiver. Concededly, the right to be informed of the nature and cause of the accusation against him may not be waived, but the defense may waive the right to enter a plea and let the court enter a plea of “not guilty” [*People v. Bryan Ferdinand Dy*, G.R. Nos. 115236-37, January 29, 2002]. The right cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed. For an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information [*People v. Flores, Jr.*, G.R. No. 128823-24, December 27, 2002].

i) However, it is altogether a different matter if the accused themselves refuse to be informed of the nature and cause of the accusation against them. The defense cannot hold hostage the court by such refusal. Thus, in this case, it was held that there was substantive compliance with this right when the counsel of the accused received a copy of the Prosecutor’s resolution sustaining the charge for rape and acts of lasciviousness. The failure to read the information to the accused was a procedural infirmity that was eventually non-prejudicial to the accused. Not only did they receive a copy of the information, they likewise participated in the trial, cross-examined the complainant and her witnesses and presented their own witnesses to deny the charges against them. The conduct of the defense, particularly their participation in the trial, clearly indicates that they were fully aware of the nature and cause of the accusation against them.

ii) Failure to object to the multiple offenses alleged in the criminal information during the arraignment is deemed a waiver of the right [*Abalos v.*

People, G.R. No. 136994, September 17, 2002], Thus, in *Dimayacyac v. Court of Appeals, G.R. No. 136264, May 18, 2004*, the Supreme Court said that the accused may be convicted of as many offenses charged in the information and proved during the trial, where he fails to object to such duplicitous information during the arraignment.

iii) An information which lacks certain material allegations (in this case, rape through force and intimidation) may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency is cured by competent evidence presented therein [*People v. Palarca, G.R. No. 146020, May 29, 2002*].

5. Right to speedy, impartial and public trial.

a) Speedy trial: a trial free from vexatious, capricious and oppressive delays. But justice and fairness, not speed, are the objectives. See *Acevedo v. Sarmiento, 36 SCRA 247; Martin v. Ver, 123 SCRA 745*. Accused is entitled to dismissal, equivalent to acquittal, if trial is unreasonably delayed.

i) The right to speedy trial is relative, subject to reasonable delays and postponements arising from illness, medical attention, body operations, etc. Speedy trial means one that can be had as soon after indictment is filed as the prosecution can, with reasonable diligence, prepare for trial. While accused persons do have rights, many of them choose to forget that the aggrieved also have the same rights [*People v. Ginez, 197 SCRA 481*]. In determining the right of the accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of scheduled hearings, of the case. What offends the right are unjustified postponements which prolong trial for an unreasonable length of time. In this case, the hearing was only postponed twice and for a period of less than two months; thus, there was no violation of the constitutional right to speedy trial [*People v. Tampal, 244 SCRA 202*]. The right to speedy trial is violated only when the proceeding is attended by vexatious, capricious and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried [*de la Rosa v. Court of Appeals, 253 SCRA 499; Tai Lim v. Court of Appeals, G.R. No. 131483, October 26, 1999*].

ia) The different interests of the defendant which the right to speedy trial are designed to protect are: (1) to prevent oppressive pre-trial incarceration; (b) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. But the right to speedy trial cannot be invoked where to sustain the same would result in a clear denial

of due process to the prosecution. In essence, the right to a speedy trial does not preclude the people's equally important right to public justice [*Uy v. Hon. Adriano, G.R. No. 159098, October 27, 2006*],

ii) A separate trial is consonant with the right of the accused to a speedy trial. In this case, it has been eight years since the information was filed, and the case has yet to be tried. The long delay has clearly prejudiced the petitioner who is more than 73 years old. The inconvenience and expense on the part of the government resulting from separate trial cannot be given preference over the right to a speedy trial [*Dacanay v. People, 240 SCRA 490*],

iii) See *Republic Act No. 8493 [The Speedy Trial Act]*, which provides, among others, that the arraignment of an accused shall be held within 30 days from filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least 15 days to prepare for trial. Trial shall commence within 30 days from arraignment as fixed by the court. In no case shall the entire trial period exceed 180 days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court.

iiia) R. A. 8493 is a means of enforcing the right of the accused to a speedy trial. The spirit of the law is that the accused must go on record in the attitude of demanding a trial or resisting delay. If he does not do this, he must be held, in law, to have waived the privilege [*Uy v. Hon. Adriano, G.R. No. 159098, October 27, 2006*].

b) Impartial trial. The accused is entitled to the "cold neutrality of an impartial judge". In *People v. Opida, 142 SCRA 295*, the judgment of conviction was reversed upon showing that the trial judge was biased because of the appearance and criminal record of the accused. In *Imelda Romualdez Marcos v. Sandiganbayan, supra.*, reiterating *Tabuena v. Sandiganbayan, supra.*, the cross-examination of the accused and the witnesses by the court constituted bias and partiality. But the impartiality of the judge cannot be assailed on the ground that he propounded clarificatory questions to the accused [*People v. Castillo, G.R. No. 120282, April 20, 1998*]. Indeed, trial judges must be accorded a reasonable leeway in asking questions as may be essential to elicit relevant facts and to bring out the truth. This is not only the right but the duty of the judge who feels the need to elicit information to the end that justice will be served [*People v. Vaynaco, G.R. No. 126286, March 22, 1999*].¹⁹

i) In *Go v. Court of Appeals, 221 SCRA 397*, the Supreme Court said that the "cold neutrality of an impartial judge", although required for the

benefit of litigants, is also designed to preserve the integrity of the judiciary and more fundamentally, to gain and maintain the people's faith in the institutions they have erected when they adopted our Constitution.

ii) In *People v. Sanchez*, G.R. Nos. 121039-45, January 25, 1999, the Supreme Court, citing *People v. Teehankee, Jr.*, 249 SCRA 54, rejected the appellant's contention that he was denied the right to an impartial trial due to prejudicial publicity. Pervasive publicity is not *per se* prejudicial to the right of the accused to a fair trial.

c) Public trial. This is intended to prevent possible abuses which may be committed against the accused. The rule is not absolute. See *Garcia v. Domingo*, 52 SCRA 143.

i) An accused has a right to a public trial, but it is a right that belongs to him more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secret conclaves of long ago. A public trial is not synonymous with a publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process [*Re: Request for Live TV Coverage of the Trial of former President Joseph Estrada*, A.M. No. 01-4-03-SC, June 29, 2001],

6. Right to meet witnesses face to face. Right to cross-examine complainant and witnesses. The testimony of a witness who has not submitted himself to cross-examination is not admissible in evidence. The affidavits of witnesses who are not presented during the trial — and thus, are not subjected to cross-examination — are inadmissible because they are hearsay [*People v. Quidato*, G.R. No. 117401, October 1, 1998; *Cariago v. Court of Appeals*, G.R. No. 143561, June 6, 2001]. Thus, in *People v. Monje*, G.R. No. 146689, September 27, 2002, the Supreme Court said that to administer by final judgment the dreaded lethal injection on the basis of circumstantial evidence consisting mainly of the testimony of a witness who failed and refused to return to court and submit to cross-examination four times is judicial tyranny of the highest order. But the right to cross-examine witnesses may be waived.

a) In *People v. Lacbanes*, G.R. No. 88684, March 20, 1997, it was held that the failure to present as witness the poseur-buyer in a prosecution for illegal sale of marijuana, is not fatal to the prosecution's case, because what is required is merely proof of the consummation of the sale transaction, and in this case, the entire transaction was witnessed by Pfc. Rosales who testified on the same. Distinguish this case from *People v. Tapeda*, 244

SCRA 339, where the Supreme Court said that the failure of the prosecution to present as witness the poseur-buyer in a buy-bust operation was fatal to the prosecution's case, because without the testimony of the latter there is no convincing evidence that the accused was a marijuana peddler and not simply the victim of instigation.

7. Right to compulsory process to secure the attendance of witnesses and the production of evidence.

a) A subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition [*Caamic v. Galapon*, 237 SCRA 390]. In this jurisdiction, there are two kinds of subpoena, to wit: subpoena *ad testificandum* and subpoena *duces tecum*. The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified. Well-settled is the rule that before a subpoena *duces tecum* may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents, or other things requested must appear *prima facie* relevant to the issue subject of the controversy (test of relevancy); and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness) [*Roco v. Contreras*, G.R. No. 158275, June 28, 2005].

b) In *People v. Chua*, G.R. No. 128280, April 4, 2001, the Court reiterated what, in *US v. Ramirez*, it declared as the requisites for compelling the attendance of witnesses and the production of evidence, as follows: [a] the evidence is really material; [b] accused is not guilty of neglect in previously obtaining the production of such evidence; [c] the evidence will be available at the time desired; and [d] no similar evidence can be obtained.⁸

8. Trial in absentia. The purpose of this rule is to speed up the disposition of criminal cases, trial of which could, in the past, be indefinitely deferred, and many times completely abandoned, because of the defendant's escape [*People v. Agbulos*, 222 SCRA 196]. Sec. 6, Rule 120 of the Revised Rules on Criminal Procedure authorizes the promulgation of judgment in absentia in view of the failure of the accused to appear despite notice. This is intended to obviate the situation where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment [*People v. Court of Appeals*, G.R. No. 140285, September 27, 2006]. Trial in absentia is mandatory upon the court whenever the accused has been arraigned, notified of date/s of hearing, and his absence is unjustified. See *Gimenez v. Nazareno*, 160 SCRA 1; *People v. Judge Salas*, 143 SCRA 163; *Aquino v. Military Commission No. 2*, 22 SCRA 510.

a) Waiver of appearance or trial in absentia does not mean that the prosecution is thereby deprived of the right to require the presence of the accused for purposes of identification by its witnesses which is vital for the conviction of the accused [*People v. Macaraeg*, 141 SCRA 37]. Even after the accused has waived further appearance during the trial, he can be ordered arrested by the court for non-appearance upon summons to appear for purposes of identification [*Carredo v. People*, 183 SCRA 273].

b) Thus, the presence of the accused is mandatory: [i] during arraignment and plea; [ii] during trial, for identification; and [iii] during promulgation of sentence, unless for a light offense wherein the accused may appear by counsel or a representative.

c) An accused who escapes from confinement, or jumps bail, or flees to a foreign country, loses his standing in court, and unless he surrenders or submits himself to the jurisdiction of the court, he is deemed to have waived his right to seek relief from the court, including the right to appeal his conviction [*People v. Mapala*, 197 SCRA 79]. One who jumps bail can never offer a justifiable reason for his non-appearance during the trial. Accordingly, after the trial in absentia, the court can render judgment in the case and promulgation can be made by simply recording the judgment in the criminal docket with a copy thereof served upon his counsel, provided that the notice requiring him to be present at the promulgation of judgment is served through his bondsmen or warden and counsel [*People v. Acabal*, G.R: No. 103604-05, September 23, 1993].

P. Habeas corpus. fSec. 15. Art. III. "The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when public safety requires it.]

1. *Definition of a writ of habeas corpus:* "A writ issued by a court directed to a person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, to submit to, and to receive whatever the court or judge awarding the writ shall consider in his behalf."²

2. *When available.* Habeas corpus restores the liberty of an individual subjected to physical restraint. The high prerogative of the writ was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint and is the best and only sufficient defense of personal freedom. It secures to the prisoner the right to have the cause of his detention examined and determined by a court of justice, and to have the issue ascertained as to whether he is held under lawful authority.

be availed of where, as a consequence of a judicial proceeding [i] there has been deprivation of a constitutional right resulting in the restraint of the person; [ii] the court has no jurisdiction to impose the sentence; or [iii] an excessive penalty has been imposed, since such sentence is void as to the excess [*Feria v. Court of Appeals, G.R. No. 122954, February 15, 2000*, and reiterated in *In Re: Reynaldo de Villa, G.R. No. 158802, November 17, 2004*]. It may also extend to cases by which rightful custody of any person is withheld from the person entitled thereto [*Pijing v. Court of Appeals, G.R. No. 125901, March 8, 2001*] .

a) In *Caunca v. Salazar*, 82 Phil 851, the writ was issued on the ground that moral restraint was being exerted by the employer to prevent the housemaid from leaving. In *Alcantara v. Director of Prisons*, 75 Phil 749, a person detained during the Japanese Occupation for an offense of political complexion could demand his release on habeas corpus after the legitimate government was restored. In *Gumabon v. Director of Prisons*, 37 SCRA 420, the right was accorded a person sentenced to a longer penalty than was subsequently meted out to another person convicted of the same offense. It may also be availed of in case of unlawful denial of bail. In *Ordonez v. Director of Prisons*, 235 SCRA 152, the Supreme Court granted the writ in favor of two persons convicted by the military court and condemned to die by musketry, in view of the ruling in *Tan v. Barrios*, 190 SCRA 686, that "civilians who have been convicted by military courts and who have been serving (but not yet completed) their sentences of imprisonment, may be given the option either to complete service of their sentence or be tried anew by the civil courts; and upon conviction, they should be credited in the service of their sentence for the full period of their previous imprisonment; upon acquittal, they should be set free".

b) The writ will not issue where the person alleged to be restrained of liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so. The ultimate purpose of the writ is to relieve a person from unlawful restraint. It is essentially a writ of inquiry and is granted to test the right under which he was detained. Even if the detention is, at its inception, illegal, supervening events, such as the issuance of a judicial process, may prevent the discharge of the detained person [*Jackson v. Macalino*, G.R. No. 139255, November 24, 2003]. In *Serapio v. Sandiganbayan*, G.R. No. 148468, the Court observed that the petitioner was under detention pursuant to the order of arrest issued by the Sandiganbayan after the filing by the Ombudsman of the amended information for plunder against petitioner and his co-accused. Petitioner had, in fact, voluntarily surrendered to the authorities on April 25, 2001, upon learning that a warrant for his arrest had been issued. Likewise, in *Tung Chin Hui v. Commissioner Rodriguez*, G.R. No. 141938, April 02, 2001,

where the petitioner had already been charged and ordered deported by the Bureau of Immigration and Deportation, petitioner's confinement cannot be considered illegal and there is no justification for the writ. Also, where the person detained applied for and was released on bail, the petition for habeas corpus became moot and academic insofar as it questioned the legality of the arrest and detention [*Magno v. Court of Appeals*, 212 SCRA 229]. Neither can marital rights, including living in a conjugal dwelling, be enforced by the extraordinary writ of habeas corpus [*Illusorio v. Bildner*, G.R. No. 139789, May 12, 2000].

- i) The fact that the preliminary investigation was invalid and that the offense had already prescribed do not constitute valid grounds for the issuance of a writ of habeas corpus. The remedy is to file a motion to quash the warrant of arrest, or to file a motion to quash the information based on prescription [*Paredes v. Sandiganbayan*, 193 SCRA 464],
- ii) Restrictive custody and monitoring of movement or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty. A petition for habeas corpus will be given due course only if it shows that petitioner is being detained or restrained of his liberty unlawfully [*SP02 Geronimo Manalo v. PNP Chief Oscar Calderon*, G.R. No. 178920, October 15, 2007],
- c) In *Dizon v. Eduardo*, 158 SCRA 470, in the case of *desaparecidos* (disappeared persons), because the persons in whose behalf the writ was issued could not be found, there was no relief granted by the Court, except to refer the matter to the Commission on Human Rights, although the Court ruled that in case of doubt as to whether detainees had been actually released, the burden of proof rests upon the officers who detained them and who claim to have effected the release of the detainees.
- d) In *Angeles v. Director of New Bilibid Prison*, 240 SCRA 49, the Court declared that all courts of competent jurisdiction may entertain petitions for habeas corpus to consider the release of petitioners convicted for violation of the Dangerous Drugs Act, provided they have served the maximum term of the applicable penalties newly prescribed by R.A. 7659. In this regard, the formalities required shall be construed liberally. In the instant case, however, since petitioner had served only the minimum of the prescribed penalty, he is not entitled to be released on a petition for habeas corpus.
- e) In *In Re: Petition for Habeas Corpus of Wilfredo S. Sumulong-Torres*, 251 SCRA 709, the petition was denied because with the cancellation of the conditional pardon, the petitioner would still have to serve his prison

term up to November 2, 2000. Habeas corpus lies only where the restraint of a person's liberty has been judicially adjudged to be illegal or unlawful. Likewise, in *Feria v. Court of Appeals, supra.*, it was held that the loss of the judicial records of the case, after 12 years of detention in the service of the sentence imposed for conviction of murder, will not entitle the convict to be released on a writ of habeas corpus. The proper remedy, is reconstitution of judicial records.

3. Procedure. There is need to comply with the writ; disobedience thereof constitutes contempt of court [*Contado v. Tan*, 160 SCRA 404].

4. Grounds for suspension; duration of suspension; congressional authority; Supreme Court power of review; application of suspension; effect of martial law on privilege [Sec. 18, Art. VII: xxx "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 x x x . Within forty-eight hours from x x x 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. xxx The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis for 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 filing, xxx 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. "].

5. Suspension of privilege does not suspend right to bail [Sec. 13, Art. III].

Q. Speedy disposition of cases. [Sec. 16, Art. III]: "All persons shall have the right to a speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies.]¹

1. Relate this to the right of accused to speedy trial [Sec. 14, Art. III], and to periods for decision for courts [Sec. 15, Art. VIII] and for the

Commissions [Sec. 7, Art. IX-A]. However, this right is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Thus, any party to a case may demand expeditious action on all officials who are tasked with the administration of justice [*Cadalin v. POEA Administrator*, 238 SCRA 722].

2. However, like the right to a speedy trial, this right is violated only when the proceedings are attended by vexatious, capricious and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. A mere mathematical reckoning of the time involved, therefore, would not be sufficient [*Binay v. Sandiganbayan*, 120281-83, October 1, 1999, citing *Socrates v. Sandiganbayan*, *supra*]. Thus, in *Sambang v. General Court Martial PRO-Region 6*, G.R. No. 140188, August 3, 2000, the Supreme Court said that although it was unfortunate that it took about 8 years before the trial of the case was resumed, there was no delay amounting to a violation of the petitioner's right to speedy disposition of cases, considering that the delay was not attributable to the prosecution.

a) But, unlike the right to a speedy trial, this constitutional privilege applies not only during the trial stage but also when the case has already been submitted for decision [*Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2002].

3. In *Tilendo v. Ombudsman*, G.R. No. 165975, September 13, 2007, the Supreme Court said that the concept of speedy disposition of cases is relative or flexible. A simple mathematical computation of the time involved is insufficient. In ascertaining whether the right to speedy disposition of cases has been violated, the following factors must be considered: (a) the length of the delay; (b) the reasons for the delay; (c) the assertion or failure to assert such right by the accused; and (d) the prejudice caused by the delay.⁴

4. In *Roque v. Office of the Ombudsman*, G.R. No. 129978, May 12, 1999, the Supreme Court held that consistent with the rights of all persons to due process of law and to speedy trial, the Constitution commands the Office of the Ombudsman to act promptly on complaints filed against public officials. The failure of the said office to resolve a complaint that has been pending for six years is clearly violative of this mandate and the public officer's right. In such event, the aggrieved party is entitled to the dismissal of the complaint. A similar ruling was made in *Abardo v. Sandiganbayan*, G.R. No. 13957172, March 28, 2001; *Cervantes v. Sandiganbayan*, G.R. No. 108595, May 18, 1999, and in *Tatad v. Sandiganbayan*, 159 SCRA 70.

a) In *Guianiv. Sandiganbayan*, G.R. Nos. 146897-917, August 6, 2002, it was held that the period of time which elapsed in the conduct of preliminary investigation was warranted by the sequence of events. Considering the complexity of the transaction involved, the fact that the 41 respondents were required to file counter-affidavits, that most respondents moved for extension of time, it appears that the petitioners impliedly acquiesced in the delay.

5. In *Abadia v. Court of Appeals*, 236 SCRA 676, it was held that this right extends to all citizens, including those in the military, and covers the period before, during and after the trial, affording broader protection than Sec. 14 (2), Art. III, which guarantees merely the right to a speedy trial. Accordingly, the Court of Appeals did not commit grave abuse of discretion when it granted the writ of habeas corpus and stated that the absence of a time limit within which the Chief of Staff or reviewing authority may approve or disapprove the order of dismissal on the ground of prescription may be subject to abuse.

6. In *Guerrero v. Court of Appeals*, 257 SCRA 703, the Supreme Court said that while this Court recognizes the right to speedy disposition of cases quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In this case, the failure of the petitioner to assert his right seasonably was interpreted as a waiver of such right. Thus, in *Dimayacyac v. Judge Roxas*, G.R. No. 136264, May 28, 2004, and in *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004, because the petitioners had failed seasonably to assert their constitutional right to speedy disposition of their cases, the Court ruled that they were deemed to have waived their right.

R. Self-incrimination. fSec. 17, Art. III: "No person shall be compelled to be a witness against himself.]

1. *Availability.* The right is available not only in criminal prosecutions but also in all other government proceedings, including civil actions and administrative or legislative investigations. It may be claimed not only by the accused but also by any witness to whom a question calling for an incriminating answer is addressed.

a) Rule. As a rule, it may be invoked only when and as the question calling for an incriminating answer is asked, since the witness has no way of knowing in advance the nature or effect of the question to be put to him. This is true, however, only of an ordinary witness.

b) In a criminal prosecution, the accused may not be compelled to take the witness stand, on the reasonable assumption that the purpose of the interrogation will be to incriminate him [*Chavez v. Court of Appeals*, 24 SCRA 663]. The same principle shall apply to the respondent in an administrative proceeding where the respondent may be subjected to sanctions of a penal character, such as the cancellation of his license to practice medicine [*Pascual v. Board of Medical Examiners*, 28 SCRA 345] or the forfeiture of property [*Cabal v. Kapunan*, 6 SCRA 1064],

2. *Scope.* The kernel of the right is not against all compulsion, but testimonial compulsion only [*Alih v. Castro, supra.*]. The right against self-incrimination is simply against the legal process of extracting from the lips of the accused an admission of his guilt. It does not apply where the evidence sought to be excluded is not an incriminating statement but an object evidence [*People v. Malimit*, 264 SCRA 167] What is actually proscribed is the use of physical or moral compulsion to extort communication from the accused-appellant and not the inclusion of his body in evidence when it may be material.

a) Thus, substance emitted from the body of the accused may be received in evidence. Hair samples taken from the accused may be admitted in evidence against him [*People v. Rondero*, G.R. No. 125687, December 9, 1999] Evidence involving deoxyribonucleic acid (DNA) is likewise admissible, and in *People v. Vallejo*, G.R. No. 144656, May 9, 2002, and in *People v. Yatar*, G.R. No. 150224, May 19, 2004, was utilized to affirm the death sentence on the accused found guilty of child-rape with homicide.

b) A person may be compelled to submit to fingerprinting, photographing and paraffin testing, as there is no testimonial compulsion involved. In *People v. Gallarde*, G.R. No. 133025, February 27, 2000, where immediately after the incident, the policemen took pictures of the accused without the presence of counsel, it was held that there was no violation. In fact, the accused may be compelled to submit to a physical examination to determine his involvement in an offense of which he is accused. In *U.S. v. Tan Teng*, 23 Phil 145, a person charged with rape was ordered examined for gonorrhea, which might have been transmitted to the victim; in *Villaflor v. Summers*, 41 Phil 62, a woman accused of adultery was subjected to medical examination to determine if she was pregnant. In *People v. Tranca*, 35 SCRA 455, the accused was made to undergo ultra-violet ray examination to determine the presence of fluorescent powder dusted on the money used in a buy-bust operation.

c) The prohibition extends to the compulsion for the production of documents, papers and chattels that may be used as evidence against the

witness, except where the State has a right to inspect the same such as the books of accounts of corporations, under the police or taxing power. Thus, in *Regala v. Sandiganbayan*, 262 SCRA 122, the Supreme Court said that the demand of the PCGG that the petitioners — lawyers and co-accused — would be excluded from the case if they revealed the identity of their clients and submit the documents related to the suspected transactions, violated the right of the petitioners against self-incrimination. They did not have to wait until they were called to testify; they could raise the objection because they were not merely witnesses; they were parties in the case for the recovery of ill-gotten wealth. However, in *Almonte v. Vasquez, supra.*, it was held that where the subpoena duces tecum is directed to government officials required to produce official documents/public records which are in their possession or custody, then there is no violation of the right against self incrimination.

d) The privilege also protects the accused against any attempt to compel him to furnish a specimen of his handwriting in connection with a prosecution for falsification [*Beltran v. Samson*, 53 Phil 570].

3. *Immunity*. The immunity granted to the witness may be either transactional immunity, such as that which may be granted by the Commission on Human Rights to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority, which makes the witness immune from criminal prosecution for an offense to which his compelled testimony relates [Sec. 18(8), Art. XIII]; or use and fruit immunity, which prohibits the use of the witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness [*Galman v. Pamaran*, 138 SCRA 274].

a) In *Mapa v. Sandiganbayan*, 231 SCRA 783, it was held that these immunity statutes are not a bonanza from government. Those given this privilege paid a high price for it; the surrender of their right to remain silent. These laws should, therefore, be given a liberal interpretation.

4. *Waiver*. The right against self-incrimination may be waived, either directly or by a failure to invoke it, provided the waiver is certain and unequivocal and intelligently made. Thus, the accused who takes the witness stand voluntarily and offers testimony in his behalf may be cross-examined and asked incriminating questions on any matter he testified to on direct examination.

a) In *People v. Judge Ayson, supra.*, the Supreme Court said: In fine, a person suspected of having committed a crime and subsequently charged

with its commission has the following rights in the matter of his testifying or producing evidence, to wit: (i) Before the case is filed in Court [or with the public prosecutor, for preliminary investigation], but after having been taken into custody or otherwise deprived of his liberty in some significant way, and on being interrogated by the police: the continuing right to remain silent and to counsel, and to be informed thereof, not to be subjected to force, violence, threat, intimidation or any other means which vitiates the free will; and to have evidence obtained in violation of these rights rejected and inadmissible; and (ii) After the case is filed in Court: to refuse to be a witness; not to have any prejudice whatsoever result to him by such refusal; to testify in his own behalf, subject to cross-examination; and while testifying, to refuse to answer a specific question the answer to which tends to incriminate him for some crime other than that for which he is being prosecuted.

S. Non-detention by reason of political beliefs or aspirations. [Sec. 18(11. Art. III: No person shall be detained solely by reason of his political beliefs or aspirations.]

T. Involuntary servitude. [Sec. 18(21. Art. III: "No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted."]

1. Reinforced by Art. 272, Revised Penal Code, which provides: "The penalty of prision mayor and a fine of not exceeding P10,000 shall be imposed upon anyone who shall purchase, sell, kidnap, or detain a human being for the purpose of enslaving him." See *Caunca v. Salazar*, 82 Phil 851.

2. *Exceptions:*

- a) punishment for a crime whereof one has been duly convicted.
- b) service in defense of the State [Sec. 4, Art. II], See *People v. Zosa*, 38 O.G. 1676].
- c) naval [merchant marine] enlistment. See *Robertson v. Baldwin*, 165 U.S. 75.
- d) *posse comitatus*. See *U.S. v. Pompeya*, 31 Phil 245.
- e) return to work order in industries affected with public interest. See *Kapisanan ng Manggagawa sa Kahoy v. Gotamco Sawmills*, 45 O.G. Supp. No. 9, p. 147.
- f) *patria potestas* [Art. 311, Civil Code],

U. Prohibited punishments. [Sec. 19. Art. III: "(1) Excessive fines shall not be imposed, nor cruel, degrading, or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless for compelling reasons involving

heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua. (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.]

1. Mere severity does not constitute cruel or unusual punishment [*People v. Dionisio*, 22 SCRA 299]. To violate the constitutional guarantee, the penalty must be flagrantly and plainly oppressive, wholly disproportionate to the nature of the offense as to shock the moral sense of the community [*People v. Estoista*, 93 Phil 647]. Settled is the rule that a punishment authorized by statute is not cruel or degrading unless it is flagrantly and plainly oppressive or wholly disproportionate to the nature of the offense. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Thus, while PD 818 increased the imposable penalties for estafa committed under Art. 315, par. 2(d) without increasing the amounts corresponding to the new penalties, it does not violate the constitutional injunction against excessive punishment. The fact that the decree did not increase the amounts only proves that the amount is immaterial. What the law sought to avert was the proliferation of estafa cases committed by means of bouncing checks [*Lim v. People*, G.R. No. 149276, September 27, 2002].

a) Penalties for violation of the Generics Act ranging from a fine of P2,000 (for 2nd conviction) to not less than P10,000 (for 4th conviction) and suspension of license to practice profession for one year or longer, do not constitute cruel, degrading or inhuman punishment [*del Rosario v. Bengzon*, 180 SCRA 521]. The indeterminable period of imprisonment prescribed as a penalty in Sec. 32, R.A. 4670 [Magna Carta for Public School Teachers] does not make it a cruel or unusual punishment. However, because it has neither a maximum nor a minimum duration, it gives the court wide latitude of discretion, without the benefit of a sufficient standard, and is unconstitutional for being an invalid delegation of legislative power [*People v. Judge Dacuyucuy*, 173 SCRA 90]. PD 818, the decree increasing the penalty for estafa committed through the issuance of bouncing checks, is constitutional; it is not cruel, degrading nor inhuman punishment [*Lim v. People*, G.R. No. 149276, September 27, 2002].

2. The death penalty is not a cruel or unusual punishment [*Harden v. Director of Prisons*, 81 Phil 741; *People v. Camano*, 115 SCRA 688]. It is an exercise of the State's power "to secure society against the threatened and actual evil" [*People v. Echegaray*, 267 SCRA 682].

a) In *People v. Echegaray*, *supra*., the Supreme Court upheld the validity of R.A. 7659 (Death Penalty Law) against the challenge that there

are no compelling reasons for the enactment of the same. The Court also rejected the contention that the death penalty is cruel, degrading or inhuman punishment, and said that the U.S. Supreme Court, in *Furman v. Georgia*, did not categorically rule on such issue; what was in issue was the arbitrariness pervading the procedure by which the death penalty was imposed on the accused by the sentencing jury. While the U.S. Court nullified all discretionary death penalty statutes in *Furman*, it did so because the discretion which these statutes vested in the trial judges and sentencing juries was uncontrolled and without any parameters, guidelines or standards intended to lessen, if not altogether eliminate, the intervention of personal biases, prejudices and discriminatory acts on the part of the trial judges and sentencing juries. This ruling was re-affirmed in *People v. Rivera, G.R. No. 130607, November 17, 1999*. Lately, in *People v. Baway, G.R. No. 130406, January 22, 2001*, the Supreme Court added that the issue of whether the death penalty should remain in our penal laws is a question which should be addressed to the legislature, because the courts are not the proper venue for a protracted debate on the morality and the propriety of capital punishment.

b) In *Louisiana v. Resweber*, 329 U.S. 459, where a mechanical failure in the electric chair prevented the execution of the convict, and another execution date was scheduled by the warden, the US Supreme Court denied the plea of the convict that he was being subjected to a cruel and unusual punishment — as there is no intent to inflict unnecessary pain or any unnecessary pain involved in the proposed execution. The situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of anguish and physical pain in any other occurrence, such as, for example, a fire in the cellblock.

c) In *Echegaray v. Secretary of Justice*, G.R. No. 132601, January 19, 1999, the Supreme Court said that the suspension of the execution of the death sentence is indisputably an exercise of judicial power, as an essential aspect of jurisdiction. It is not a usurpation of the presidential power of reprieve, although its effect is the same, i.e., the temporary suspension of the execution of the death convict. In the same vein, it cannot be denied that Congress can, at any time, amend R.A. 7659 by reducing the penalty of death to life imprisonment. The effect of such amendment is like commutation of sentence. The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life.
i)

i) But the mere pendency in the two houses of Congress of a bill seeking the repeal of R.A. 7659 should not *per se* warrant the outright issuance of a temporary restraining order to stay the execution of a death

sentence that has become final. In fact, being speculative, it is not and should not be considered as a ground for the stay of a death sentence [*Pagdayawon v. Secretary of Justice, G.R. No. 154569, September 23, 2002*].

d) Plea of guilt in capital offenses. When an accused pleads guilty to a capital offense, the stringent constitutional standards of the due process clause require that the trial court must conduct a searching inquiry into the voluntariness of the plea, and the accused's full comprehension of the consequences thereof. It shall also require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability. The accused must also be asked if he desires to present evidence, and in the affirmative, allow him to do so [*People v. Sta. Teresa, G.R. No. 130633, March 20, 2001; People v. Galas, G.R. Nos. 139413-15, March 20, 2001*]. Because these standards were not complied with, the Supreme Court remanded to the trial court the cases in *People v. Aranzado, G.R. Nos. 132442-44, September 21, 2001*, and *People v. Benavidez, G.R. Nos. 142372-74, September 17, 2002*. On the other hand, in *People v. Principe, G.R. No. 135862, May 02, 2002*, the conviction was affirmed, because even if the accused's improvident plea were to be disregarded, in addition to his plea, other evidence, consisting of his extrajudicial confession, his testimony in court and the testimony of other witnesses, were sufficient to sustain a conviction.

3. Automatic review in death penalty cases shall proceed even in the absence of the accused, considering that "nothing less than life is at stake and any court decision must be as error-free as possible" [*People v. Palabrica, G.R. No. 129285, May 7, 2001*]. The automatic review of the death penalty includes an appeal of the less serious crime not punished by death but arising out of the same occurrence or committed by the accused on the same occasion [*People v. Panganiban*],

V. Non-imprisonment for debt. fSec. 20. Art. III: "No person shall be imprisoned for debt or non-payment of a poll tax. "]

1. In *Serafin v. Lindayag*, 67 SCRA 166, where a judge issued a warrant of arrest on the strength of a criminal complaint charging the accused with wilful non-payment of debt, the Supreme Court annulled the warrant. In *Sura v. Martin*, 26 SCRA 286, the trial court ordered the arrest of the defendant for failure, owing to his insolvency, to pay past and present support. The Supreme Court held that the arrest was invalid.²

2. While the debtor cannot be imprisoned for failure to pay his debt, he can be validly punished in a criminal action if he contracted his debt through fraud, as his responsibility arises not from the contract of loan, but from the

commission of the crime [*Lozano v. Martinez*, 146 SCRA 323]. In a recent challenge to the constitutionality of B.P. 22 in *Arceta v. Judge Mangrobang*, G.R. No. 152895, June 15, 2004, the Supreme Court said that even the thesis of petitioner that the present economic and financial crisis should be a basis to declare the law constitutionally infirm deserves scant consideration. As stressed in *Lozano*, it is precisely during trying times that there exists a most compelling reason to strengthen faith and confidence in the financial system and any practice tending to destroy confidence in checks as currency substitutes should be deterred, to prevent havoc in the trading and financial communities.

3. In *People v. Judge Nitafan*, 207 SCRA 726, reiterated in *Tiomico v. Court of Appeals*, G.R. No. 122539, March 4, 1999, the Supreme Court ruled that BP 115 (Trust Receipts Law) is a valid exercise of the police power and does not violate this provision, because the law does not seek to enforce a loan but to punish dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another. Violation of trust receipt agreement is punishable as estafa which is not an offense against property, but against public order.

W. Double Jeopardy. [Sec. 21. Art. III]: “No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”]

1. Requisites:

a) Valid complaint or information. Double jeopardy does not attach in preliminary investigation [*Icasiano v. Sandiganbayan*, 209 SCRA 377],

b) Filed before a competent court. See *People v. Grospe*, 157 SCRA 154; *Cruz v. Enrile*, 160 SCRA 702. Where the six criminal informations were erroneously filed with the City Court of Lucena (which did not have jurisdiction, as the proper court was the CFI of Quezon), even if the accused had already been arraigned, no double jeopardy will attach in the subsequent prosecution before the CFI of Quezon [*People v. Puno*, 208 SCRA 550]. The same principle was applied in *Cudia v. Court of Appeals*, G.R. No. 110815, January 16, 1998, where the first information was filed in the RTC of Angeles City but jurisdiction was with the RTC of Pampanga inasmuch as the offense was committed in Mabalacat, Pampanga. Accordingly, when it becomes manifest before the judgment that a mistake has been made in charging the proper offense, the first charge shall be dismissed to pave the way for the filing of the proper offense. The dismissal of the first case will not give rise to double jeopardy inasmuch as,

in this case, it is clear that the MTC did not have jurisdiction to try the offense of rape [*Gonzales v. Court of Appeals*, 232 SCRA 667]. Thus, in *Cunanan v. Arceo*, 242 SCRA 88, where the criminal case was dismissed by the RTC so that the appropriate information may be filed before the Sandiganbayan which had jurisdiction, the defense of double jeopardy cannot be availed of by the petitioner.

c) To which the defendant had pleaded. Thus, in *Flores v. Joven*, G.R. No. 129874, December 27, 2002, because private respondent Navarro had not yet been arraigned, double jeopardy may not be validly invoked.

i) The grant of a motion to quash, filed before the accused makes his plea, can be appealed by the prosecution because the accused has not yet been placed in jeopardy [Sec. 9, Rule 117, Rules of Court]. In *People v. Balisacan*, 17 SCRA 1119,- the Court ruled that when the accused, after pleading guilty, testified to prove mitigating circumstances, the testimony had the effect of vacating his plea of guilty.

d) Defendant was previously acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.

i) In *People v. Judge Pineda*, G.R. No. 44205, February 11, 1993, the Supreme Court ruled that a prior conviction, or acquittal, or termination of the case without the express consent of the accused is still required before the first jeopardy can be pleaded to abate a second prosecution. In *People v. Miraflores*, 115 SCRA 586, the Supreme Court said: "The more untenable aspect of the position of the appellant is that when he invoked the defense of double jeopardy, what could have been the first jeopardy had not yet been completed or even began x x x the mere filing of two informations or complaints charging the same offense does not yet afford the accused in those cases the occasion to complain that he is being placed in jeopardy twice for the same offense, for the simple reason that the primary basis of the defense of double jeopardy is that the accused has already been convicted or acquitted in the first case, or the same has been terminated without his consent." Thus, the implication in *People v. City Court of Manila, Branch XI*, 121 SCRA 637, that prior conviction or acquittal in the first case, as long as the accused had entered his plea therein, is not required in order that the accused may move to quash a second prosecution for the same offense on the ground of double jeopardy, is now modified by *Pineda*.

ii) There is no double jeopardy where the accused was sentenced on plea-bargaining approved by the court but without the consent of the fiscal [*People v. Judge Villarama*, 210 SCRA 246]. Neither will double jeopardy

attach where the criminal case was mistakenly dismissed by the court during a hearing that had already been earlier cancelled and removed from the court calendar for that day [*Gorion v. Regional Trial Court of Cebu*, 213 SCRA 138]. The re-taking of testimony, made necessary because the transcript of stenographic notes was incomplete and a new judge had taken over the case, does not give rise to double jeopardy [*Guerrero v. Court of Appeals*, *supra*.] Withdrawal of the appeal lies in the sound discretion of the Court. Thus, where the motion of the petitioner to withdraw his appeal from the decision of the MTC (which imposed only a fine as penalty) was denied, his payment of the fine did not make the decision of the MTC final and executory. Accordingly, petitioner was not placed in double jeopardy by the decision of the RTC [*Teodoro v. Court of Appeals*, 258 SCRA 603].

iii) The promulgation of only one part of the decision, i.e., the modified civil indemnity liability, is not a bar to the promulgation of the other part, the imposition of the criminal accountability, and does not constitute a violation of the proscription against double jeopardy [*Cuizon v. Court of Appeals*, G.R. No. 128540, April 15, 1998].

iv) The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into the “humanity of the laws and a jealous watchfulness over the rights of the citizen when brought in an unequal contest with the State”. The State, with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty [*Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005].

v) *Dismissal of action.* The dismissal of the action may either be a permanent dismissal or a provisional dismissal. A permanent dismissal of a criminal case may refer to the termination of the case on the merits, resulting in either the conviction or acquittal of the accused; to the dismissal of the case because of the prosecution’s failure to prosecute; or to the dismissal thereof on the ground of unreasonable delay in the proceedings in violation of the right of the accused to speedy trial. In contrast, a provisional dismissal of a criminal case is dismissal without prejudice to reinstatement thereof before the order of dismissal becomes final, or to the subsequent filing of a new information within the periods allowed under the Revised Penal Code or the Revised Rules of Court [*Condrrada v. People*, G.R. No. 141646, February 28, 2003]. Thus, the dismissal of an action on procedural grounds, not being an acquittal, does not give rise to double jeopardy [*Paulin v. Judge Gimenez*, 217 SCRA

386]. But where the dismissal was made at the instance of the Provincial Fiscal, because on reinvestigation, it was shown that the complainants were the real aggressors and the accused acted only in self-defense, the dismissal was made without the consent of the accused, because express consent has been defined as that which is directly given, either *viva voce* or in writing, a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning [*People v. Judge Vergara*, 221 SCRA 560]. Likewise, the reinstatement of the information, after the court dismissed the case at the instance of the prosecution without asking for the consent of the accused, gives rise to double jeopardy [*Tupaz v. Judge Ulep*, G.R. No. 127777, October 1, 1999]. Consent of the accused to the dismissal cannot be implied or presumed; it must be expressed as to have no doubt as to the accused's conformity [*Caes v. Intermediate Appellate Court*, 179 SCRA 54]. When the dismissal is made at the instance of the accused, there is no double jeopardy [*People v. Quizada*, 160 SCRA 516; *Sta. Rita v. Court of Appeals*, 247 SCRA 484; *de la Rosa v. Court of Appeals*, *supra*; *People v. Leviste*, 255 SCRA 238], except:

va) When the ground for the motion to dismiss is insufficiency of evidence [*People v. City Court of Silay*, 74 SCRA 248]. Thus, the grant of a demurrer to evidence is equivalent to an acquittal, and any further prosecution of the accused would violate the constitutional proscription against double jeopardy [*Sanvicente v. People*, G.R. No. 132081, November 28, 2002; *People v. Sandiganbayan*, G.R. No. 140633, February 4, 2002; *People v. Donesa*, 49 SCRA 281]. Where the denial of the demurrer to evidence is appealed to the Court of Appeals and the latter orders the dismissal of the criminal case, the dismissal is a decision on the merits of the case which amounts to an acquittal of the accused. Thus, the court is bound by the dictum that whatever error may have been committed in effecting the dismissal of the case, this cannot now be corrected because of the timely plea of double jeopardy [*Comelec v. Court of Appeals*, 229 SCRA 501]. In *People v. Verra*, G.R. No. 134732, May 29, 2002, it was held that while the accused joined the prosecution in praying for the dismissal of the case, double jeopardy will still attach since the basis for the dismissal was the insufficiency of evidence of the prosecution. In view of private complainant's desistance and her testimony that other witnesses have turned hostile and are also no longer interested in prosecuting this case, the prosecution clearly lacks the evidence to support the charge.

vb) When the proceedings have been unreasonably prolonged as to violate the right of the accused to speedy trial [*Esmena v. Pogoy*, 102 SCRA 861]. But see *People v. Gines*, *supra*., where the motion to dismiss made at the instance of the accused, although invoking the right to speedy trial, was ruled not to have given rise to double jeopardy — because the postponement

sought did not constitute unreasonable delay. See also *People v. Tampal*, *supra*.; *People v. Levisfe*, *supra*.; *Guerrero v. Court of Appeals*, *supra*.; *Almario v. Court of Appeals*, G.R. No. 127772, March 22, 2001.

vi) *Revival of the criminal cases provisionally dismissed.* Sec. 8, Rule 117, Revised Rules on Criminal Procedure, provides a time-bar of two (2) years within which the State may revive criminal cases provisionally dismissed with the express consent of the accused and with a *priori* notice to the offended party, if the offense charged is penalized by more than six (6) years imprisonment; and one (1) year if the penalty imposable does not exceed six (6) years imprisonment or a fine in whatever amount. This rule took effect on December 1, 2000, and must be applied prospectively in order to prevent injustice to the State and avoid absurd, unreasonable and wrongful results in the administration of justice [*People v. Panfilo Lacson*, G.R. No. 149453, April 01, 2003].

vii) *Appeal by the prosecution.* The rule on double jeopardy prohibits the State from appealing or filing a petition for review of a judgment of acquittal that was based on the merits of the case. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court [*People v. Court of Appeals and Maquiling*, G.R. No. 128986, June 21, 1999; *People v. Court of Appeals and Tangan*, G.R. No. 102612, February 13, 2001]. An appeal by the prosecution from a judgment of acquittal, or for the purpose of increasing the penalty imposed upon the convict would place the latter in double jeopardy. Double jeopardy provides three related protections: (1) against a second prosecution for the same offense after acquittal; (2) against a second prosecution for the same offense after conviction; and (3) against multiple punishments for the same offense. [*People v. Dela Torre*, G.R. No. 137953-58, March 11, 2002].

viiia) Thus, in *People v. Perlita J. Tria-Tirona*, G.R. No. 130106, July 15, 2006, the Supreme Court reiterated the principle that after trial on the merits, an acquittal is immediately final and cannot be appealed, because double jeopardy would have set in. The only exception is where there is a finding of mistrial resulting in a denial of due process.

vib) But where the prosecution is denied due process, such denial results in loss or lack of jurisdiction, and thus, appeal may be allowed [*People v. Navarro*, 63 SCRA 264]. This was reiterated in *People v. Alberto*, G.R. No. 132374, August 22, 2002, where the Supreme Court said that a purely capricious dismissal of an information deprives the State of fair opportunity to prosecute and convict; it denies the prosecution its day in court; it is a dismissal without due process and therefore, null and void. In *People v. Judge Tac-an*,

G.R. No. 148000, February 27, 2003, it was held that the court acted without jurisdiction when it dismissed the case merely because none of the witnesses notified by the trial court appeared during the pre-trial.

viic) Accordingly, no double jeopardy will attach where the State is deprived of a fair opportunity to prosecute and prove its case [*Gorion v. RTC of Cebu*, 213 SCRA 138], or where the dismissal of an information or complaint is purely capricious or devoid of reason [*People v. Gomez*, 20 SCRA 293], or where there is lack of proper notice or opportunity to be heard [*Portugal v. Reantaso*, 167 SCRA 712]. Likewise, the prosecution can appeal if the accused has waived or is estopped from invoking his right against double jeopardy [*People v. Obsania*, 23 SCRA 1249], or when the dismissal or acquittal is made with grave abuse of discretion [*People v. Pablo*, 98 SCRA 289], or where there is a finding of a mistrial, as in *Galman v. Sandiganbayan*, *supra*.. See also *People v. Mogol*, 131 SCRA 296; *Heirs of Tito Rillorta v. Judge Firme*, 157 SCRA 518..

viid) Appeal from the order of dismissal by the lower court is, likewise, not foreclosed by the rule on double jeopardy where the order of dismissal was issued before arraignment [*Martinez v. Court of Appeals*, 237 SCRA 575].

viie) Similarly, as held in *Summerville General Merchandising v. Hon. Antonio Eugenio, Jr.*, *G.R. No. 16374, August 7, 2007*, double jeopardy will not set in when the order granting the withdrawal of the information was issued with grave abuse of discretion, because then the accused was not acquitted nor was there a valid and legal dismissal or termination of the case.

viii) *Discharge of co-accused.* The discharge from the information of a co-accused who is to be utilized as a government witness must be considered solid for purposes of determining whether a second prohibited jeopardy would attach upon reinstatement as a co-accused x x x Petitioner, having been acquitted of the charge of qualified theft, could not be subsequently reinstated as a co-accused in the same information without a prohibited second jeopardy arising under the circumstances, absent satisfactory proof that he had refused or failed to testify against his co-accused [*Bogo-Medellin Milling Co. v. Son* 209 SCRA 329].

ix) In *Argel v. Judge Pascua*, A.M. No. RTJ-94-1131, August 20, 2001, where the judge amended her decision of acquittal (which had already been promulgated) because she had earlier overlooked the testimony of an eyewitness, it was held that the amended decision is null and void for violating the right against double jeopardy.

2. *Crimes Covered:* With the presence of the requisites, the accused cannot be prosecuted anew for an identical offense, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the original complaint or information [*People v. Sarabia, G.R. No. 142024, July 20, 2001*]. See also *Perez v. Court of Appeals, 168 SCRA 236; Mallari v. People, 168 SCRA 422*.

a) Reckless imprudence resulting in damage to property with multiple physical injuries punished under Art. 365, RPC is not identical with violation of Art. 275, RPC, for abandonment of one's victim [*Lamera v. Court of Appeals, 198 SCRA 186*].

3. Under the second sentence of *Sec. 21, Art. III*, when an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. See *People v. Judge Relova, 148 SCRA 292*.

4. *Doctrine of Supervening Event.* The accused may still be prosecuted for another offense if a subsequent development changes the character of the first indictment under which he may have already been charged or convicted. Thus, under Section 7, Rule 117, Rules of Court, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the original complaint or information when: (a) the graver offense developed due to supervening facts arising from the same act or omission; (b) the facts constituting the graver offense arose or were discovered only after the filing of the former complaint or information; or (c) the plea of guilty to a lesser offense was made without the consent of the fiscal or the offended party. See *People v. Judge Villarama, 210 SCRA 246*.

X. *Ex post facto law and Bill of attainder.* f*Sec. 22. Art. III: "No ex post facto law or bill of attainder shall be enacted. "]*

1. *Ex post facto law*

a) Kinds: (i) Every law that makes criminal an action done before the passage of the law and which was innocent when done, and punishes such action; (ii) Every law that aggravates a crime, or makes it greater than it was when committed; (iii) Every law that changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed; (iv) Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender; (v) Every law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a

right for something which when done was lawful; (vi) Every law which deprives persons accused of a crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of a proclamation of amnesty;

b) Characteristics: (i) It refers to criminal matters; (ii) It is retroactive in application; and (iii) It works to the prejudice of the accused.

. c) Some cases: In *Bayot v. Sandiganbayan*, 128 SCRA 383, the amendatory law to RA 3019 imposing suspension *pendente lite* of public officers accused of offenses involving fraudulent use of public funds, was held not to be an ex post facto law, because the suspension was not punitive, but merely preventive. In *People v. Ferrer*, 43 SCRA 381, the Anti-Subversion Act was held not to be an ex post facto law, because the prohibition applied only to acts committed "after the approval of the Act". In *People v. Sandiganbayan*, 211 SCRA 241, the Supreme Court ruled that the provision of BP 195, amending Sec. 11, RA3019 (Anti-Graft and Corrupt Practices Act), which would increase from 10 to 15 years the prescriptive period for the offenses punished therein, cannot be given retroactive effect, as it would then be an ex post facto law. In *Wright v. Court of Appeals*, 235 SCRA 341, it was held that the retroactive application of the Treaty of Extradition (between the Philippines and Australia) does not violate the prohibition against ex post facto laws, because the Treaty is neither a piece of criminal legislation nor a criminal procedural statute; it merely provided for the extradition of persons wanted for offenses already committed at the time the treaty was ratified. In *Sesbreno v. Central Board of Assessment Appeals*, 270 SCRA 360, it was held that the imposition of back taxes on the property of the petitioner does not violate the constitutional prohibition against ex post facto laws. In *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, it was held that R.A. 8249, which defines the jurisdiction of the Sandiganbayan, is not an ex post facto law, because it is not a penal law. Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations, or those that define crimes, treat of their nature, and provide for their punishment. R.A. 8249 is clearly a procedural statute, i.e., one which prescribes rules of procedure by which courts applying laws of all kinds can properly administer justice. Not being a penal law, the retroactive application of R.A. 8249 cannot be challenged as unconstitutional. The contention that the right of the accused to a two-tiered appeal under R.A. 7975 has been diluted by R.A. 8249 has been rejected by the court several times considering that the right to appeal is not a natural right but statutory in nature that can be regulated by law. In *People v. Judge Nitafan*, G.R. Nos. 107964-66, February 1, 1999, it was held that the judge cannot, *motu proprio*, initiate the dismissal and subsequently dismiss a criminal information or complaint without any motion to that effect being filed by the

accused based on the alleged violation of the latter's right against *ex post facto* law and double jeopardy. Every law carries with it the presumption of constitutionality until otherwise declared by the Supreme Court, and lower courts may not pass upon the constitutionality of a statute or rule nor declare it void unless directly assailed in an appropriate action. Since neither the private respondent nor the Solicitor General challenged the validity of Central Bank Circular No. 960, it was error for the lower court to declare the same *ex post facto*. In *Fajardo v. Court of Appeals*, G.R. No. 128508, February 1, 1999, the Court held that P.D. 1990 is not *ex post facto*, because like the Probation Law that it amends, it is not penal in character, and it applies only to an accused who has been convicted after the effectiveness of the P.D.

2. Bill of Attainder.

a) Defined: It is a legislative act that inflicts punishment without trial.

b) Characteristics: It substitutes legislative fiat for a judicial determination of guilt. Thus, it is only when a statute applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial that it becomes a bill of attainder. In *People v. Ferrer, supra*, the Supreme Court held that the Anti-Subversion Act is not a bill of attainder, because it does not specify the Communist Party of the Philippines or the members thereof for the purpose of punishment; what it does is simply declare the Party to be an organized conspiracy to overthrow the Government; and the term "Communist Party of the Philippines" is used solely for definitional purposes.

VII. CITIZENSHIP

A. General Principles.

1. *Defined:* Membership in a political community which is personal and more or less permanent in character.

a) Distinguished from nationality. Nationality is membership in any class or form of political community. Thus, nationals may be citizens [if members of a democratic community] or subjects [if members of a monarchical community]. Nationality does not necessarily include the right or privilege of exercising civil or political rights.

2. Usual modes of acquiring citizenship:

- a) By birth
 - i) jus sanguinis
 - ii) jus soli
- b) By naturalization
- c) By marriage

3. Modes (by birth) applied in the Philippines:

a) Before the adoption of the 1935 Constitution:

i) *Jus sanguinis.* All inhabitants of the islands who were Spanish subjects on April 11, 1899, and residing in the islands who did not declare their intention of preserving Spanish nationality between said date and October 11, 1900, were declared citizens of the Philippines [*Sec. 4, Philippine Bill of 1902; Sec. 2, Jones Law of 1916*], and their children born after April 11, 1899.

. ii) *Jus soli.* As held in *Roa v. Collector of Customs*, 25 Phil 315, which was uniformly followed until abandoned in *Tan Chong v. Secretary of Labor*, 79 Phil 249; but applied again in *Talaroc v. Uy*, 92 Phil 52, until abandoned with finality in *Teotimo Rodriguez Tio Tiam v. Republic*, 101 Phil. 195. Those declared as Filipino citizens by the courts are recognized as such today, not because of the application of the *jus soli* doctrine, but principally because of the doctrine of *res judicata*.

b) After the adoption of the 1935 Constitution: Only the *jus sanguinis* doctrine.

4. Natural-born citizens. *Those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship shall be deemed natural-born citizens [Sec. 2, Art. IV],*

5. Marriage by Filipino to an alien: "*Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it*" [Sec. 4, Art. IV].

6. Policy against dual allegiance: "*Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law*" [Sec. 5, Art. IV].

a) In *Mercado v. Manzano*, 307 SCRA 630, the Court clarified the "dual citizenship" disqualification in Sec. 40, Local Government Code, and reconciled the same with Sec. 5, Art. IV of the Constitution on "dual allegiance". Recognizing situations 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. This ruling is reiterated in *Valles v. Comelec*, G.R. No. 137000, August 9, 2000.

i) Furthermore, for candidates with dual citizenship, it is enough that they elect Philippine citizenship upon the filing of their certificate of candidacy to terminate their status as persons with dual citizenship. The filing of a certificate of candidacy suffices to renounce foreign citizenship, effectively removing any disqualification as dual citizen. This is so because in the certificate of candidacy one declares that he/she is a Filipino citizen and that he/she will support and defend the Constitution and will maintain true faith and allegiance to the same. Such declaration under oath operates as an effective renunciation of foreign citizenship [*Mercado v. Manzano*, *supra*; *Valles v. Comelec*, *supra*].

ii) However, this doctrine in *Valles* and *Mercado* that the filing of a certificate of candidacy suffices to renounce foreign citizenship does not apply to one who, after having reacquired Philippine citizenship under R.A. 9225, runs for public office. To comply with the provisions of Sec. 5 (2) of R.A. 9225, it is necessary that the candidate for public office must state in clear and unequivocal terms that he is renouncing all foreign citizenship [*Lopez v.*

Comeiec, G.R. No. 182701, July 23, 2008]. In *Mercado*, the disqualification was sought under another law, Sec. 40 (d) of the Local Government Code, in which the Court defined the term “dual citizenship” vis-a-vis the concept of “dual allegiance”, and at the time the case was decided, R.A. 9225 was not yet enacted by Congress [*Jacot v. Dal and Comeiec, G.R. No. 179848, November 27, 2008*].

b) In *Calilung v. Secretary of Justice, G.R. No. 160869, May 11, 2007*, the constitutionality of R.A. 9225 (An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent, amending for the purpose, Com. Act No. 63) was challenged, allegedly for violating Sec. 5, Art. IV of the Constitution. It was claimed that Sec. 2 allows all Filipinos, whether natural-born or naturalized, who become foreign citizens, to retain their Philippine citizenship without losing their foreign citizenship; while Sec. 3 allows former natural-born citizens to regain their Philippine citizenship by simply taking an oath of allegiance without forfeiting their foreign allegiance. In upholding the validity of RA 9225, the Court said that the intent of the legislature is to do away with the provision in CA63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. It allows dual citizenship; but on its face, it does not recognize dual allegiance. By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. Plainly, Sec. 3 stays clear out of the problem of dual allegiance and shifts the burden of confronting the issue of whether or not there is dual allegiance to the concerned foreign country. What happens to the other citizenship was not made a concern of RA 9225.

i) Sec. 5, Art. IV of the Constitution is a declaration of policy and it is not a self-executing provision. The legislature still has to enact the law on dual allegiance. In Secs. 2 and 3, RA 9225, the legislature was not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Congress was given a mandate to draft a law that would set specific parameters of what really constitutes dual allegiance; thus, it would be premature for the judicial department to rule on issues pertaining to it. It should be noted that *Mercado v. Manzano* did not set the parameters of dual allegiance, but merely made a distinction between dual allegiance and dual citizenship.

7. *Attack on one's citizenship* may be made only through a direct, not a collateral proceeding [*Co v. HRET, 199 SCRA 692*].⁸

8. *Res judicata in cases involving citizenship.* The doctrine of *res judicata* does not ordinarily apply to questions of citizenship. It does so only

A person's citizenship is resolved by a court or an administrative body as a material issue in the controversy, after a full-blown hearing; (b) With the active participation of the Solicitor General or his representative; and (c) The finding of his citizenship is affirmed by the Supreme Court. Then the decision on the matter shall constitute conclusive proof of such party's citizenship in any other case or proceeding [*Board of Commissioners, CID v. de la Rosa*, 197 SCRA 853, citing *Zita Ngo Burca v. Republic*, 19 SCRA 186].

B. **Citizens of the Philippines.**

1. *Those who are citizens of the Philippines at the time of the adoption of this [1987] Constitution.*

a) Re: 1935 Constitution

i) Sec. 4, Philippine Bill of 1902; Sec. 2, Jones Law of 1916 [including children born after April 11, 1899],

ia) In *Valles v. Comelec*, *supra*., the Supreme Court made reference to these organic acts and declared that private respondent Rosalind Ybasco Lopez who was born in Australia to parents Telesforo Ybasco, a Filipino, and Theresa Marquez, an Australian, on May 16, 1934, before the 1935 Constitution took effect, was a Filipino citizen. Under these organic acts, inhabitants of the islands who were Spanish subjects on April 11, 1899, who did not opt in writing to retain Spanish nationality between April 11, 1899 to October 11, 1900 — including their children — were deemed citizens of the Philippines. Rosalind's father was, therefore, a Filipino citizen, and under the principle of *jus sanguinis*, Rosalind followed the citizenship of her father.

jb) A similar conclusion was reached in *Maria Jeanette Tecson v. Comelec*, G.R. No. 161434, March 3, 2004, on the controversy surrounding the citizenship of Fernando Poe, Jr. (FPJ), presidential candidate. The issue of whether or not FPJ is a natural-born citizen would depend on whether his father, Allan F. Poe, was himself a Filipino citizen, and if in the affirmative, whether or not the alleged illegitimacy of FPJ prevents him from taking after the Filipino citizenship of his putative father. The Court took note of the fact that Lorenzo Pou (father of Allan F. Poe), who died in 1954 at 84 years old, would have been born sometime in 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the "en masse Filipinization" that the Philippine Bill of 1902 effected. That Filipino citizenship of Lorenzo Pou, if acquired, would thereby

extend to his son, Allan F. Poe (father of FPJ), The 1935 Constitution, during which regime FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate. ■

ii) Act No. 2927 [March 26, 1920], then CA473, on naturalization [including children below 21 and residing in the Philippines at the time of naturalization, as well as children born subsequent to naturalization],

iii) Foreign women married to Filipino citizens before or after November 30, 1938 [effectivity of CA 473] who might themselves be lawfully naturalized [in view of the Supreme Court interpretation of Sec. 15, CA473, in *Moy Ya Lim Yao v. Commissioner of Immigration*, 41 SCRA 292].

iv) Those benefited by the Roa doctrine applying the *jus soli* principle.

v) *Caram provision*: Those born in the Philippines of foreign parents who, before the adoption of this [1935] Constitution, had been elected to public office in the Islands. In *Chiongbian v. de Leon*, the Supreme Court held that the right acquired by virtue of this provision is transmissible.

vi) Those who elected Philippine citizenship.

b) Re: 1973 Constitution. Those whose mothers are citizens of the Philippines. Provision is prospective in application; to benefit only those born on or after January 17, 1973 [date of effectivity of 1973 Constitution],

2. *Those whose fathers or mothers are citizens of the Philippines*. Prospective application, consistent with provision of the 1973 Constitution.

3. *Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority*.

a) Procedure for election. Election is expressed in a statement to be signed and sworn to by the party concerned before any official authorized to administer oaths. Statement to be filed with the nearest Civil Registry. The statement is to be accompanied with the Oath of Allegiance to the Constitution and the Government of the Philippines [Sec. 1, CA 625].

b) When to elect. Within three (3) years from reaching the age of majority [*Opinion, Secretary of Justice, s. 1948*]; except when there is a justifiable reason for the delay.

i) In *Cuenco v. Secretary of Justice*, 5 SCR A 110, where the Supreme Court ruled that there was justifiable reason for the delay because the party thought all along that he was already a Filipino citizen. See also *In Re: Florencio Mallari*, 59 SCRA 45, where the Supreme Court enunciated the doctrine of implied election. And in *Co v. HRET, supra.*, the Supreme Court affirmed the finding of the HRET that the exercise of the right of suffrage and participation in election exercises constitute a positive act of election of Philippine citizenship.

ii) But see *In Re: Ching, Bar Matter No. 914, October 1, 1999*, where Ching, having been born on April 11, 1964, was already 35 years old when he complied with requirements of CA 625 on June 15, 1999, or over 14 years after he had reached the age of majority. By any reasonable yardstick, Ching's election was clearly beyond the allowable period within which to exercise the privilege. All his mentioned acts cannot vest in him citizenship as the law gives the requirement for election of Filipino citizenship which Ching did not comply with.

c) The right is available to the child as long as his mother was a Filipino citizen at the time of her marriage to the alien, even if by reason of such marriage, she lost her Philippine citizenship [*Cu v. Republic*, 89 Phil 473]; and even if the mother was not a citizen of the Philippines at birth [*Opinion, Sec. of Justice, s. 1948*].

d) The right to elect Philippine citizenship is an inchoate right; during his minority, the child is an alien [*Villahermosa v. Commissioner of Immigration*, 80 Phil 541].

e) The constitutional and statutory requirements of electing Filipino citizenship apply only to legitimate children. In *Republic v. Chule Lim, G.R. No. 153883, January 13, 2004*, it was held that respondent, who was concededly an illegitimate child considering that her Chinese father and Filipino mother were never married, is not required to comply with said constitutional and statutory requirements. Being an illegitimate child of a Filipino mother, respondent became a Filipino upon birth. This notwithstanding, records show that the respondent elected Filipino citizenship when she reached the age of majority. She registered as a voter in Misamis Oriental when she was 18 years old. *The exercise of the right of suffrage and the participation in election exercises constitute a positive act of electing Philippine citizenship.*ⁱ⁾

i) Indeed, in *Serra v. Republic*, 91 Phil 914, it was held that if the child is illegitimate, he follows the status and citizenship of his only known parent, the mother.

4. *Those who are naturalized in accordance with law.*

C. *Naturalization.* The act of formally adopting a foreigner into the political body of a nation by clothing him or her with the privileges of a citizen [Record, Senate, 12th Congress, June 4-5, 2001],

1. *Modes of naturalization:*

a) Direct: Citizenship is acquired by: (i) Individual, through judicial or administrative proceedings; (ii) Special act of legislature; (iii) Collective change of nationality, as a result of cession or subjugation; or (iv) In some cases, by adoption of orphan minors as nationals of the State where they are born.

b) Derivative: Citizenship conferred on: (i) Wife of naturalized husband; (ii) Minor children of naturalized person; or on the (iii) Alien woman upon marriage to a national.

2. *Doctrine of indelible allegiance.* An individual may be compelled to retain his original nationality even if he has already renounced or forfeited it under the laws of the second State whose nationality he has acquired.

3. *Direct naturalization under Philippine laws.* Under current and existing laws, there are three (3) ways by which an alien may become a citizen of the Philippines by naturalization:

- a) judicial naturalization under Commonwealth Act No. 473, as amended;
- b) administrative naturalization under Rep. Act No. 9139; and
- c) legislative naturalization in the form of a law enacted by Congress, bestowing Philippine citizenship to an alien.

4. *Naturalization under C.A. 473.*

a) *Qualifications:* [a] Not less than 21 years of age on the date of the hearing of the petition; [b] Resided in the Philippines for a continuous period of not less than 10 years; may be reduced to 5 years if he honorably held office in Government, established a new industry or introduced a useful invention in the Philippines, married to a Filipino woman, been engaged as a teacher in the Philippines (in a public or private school not established for the exclusive instruction of persons of a particular nationality or race) or in any of the branches of education or industry for a period of not less than two years, or born in the Philippines; [c] Good moral character; believes in the principles underlying the Philippine Constitution; must have conducted himself in a

proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with the constituted government as well as the community in which he is living; [d] Own real estate in the Philippines worth not less than P5,000.00, or must have some known lucrative trade, profession or lawful occupation; [e] Speak and write English or Spanish and any of the principal Philippine languages; [f] Enrolled his minor children of school age in any of the public or private schools recognized by the Government where Philippine history, government and civics are taught as part of the school curriculum, during the entire period of residence in the Philippines required of him prior to the hearing of his petition for naturalization.

b) *Disqualifications:* Those [a] Opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments; [b] Defending or teaching the necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas; [c] Polygamists or believers in polygamy; [d] Convicted of a crime involving moral turpitude; [e] Suffering from mental alienation or incurable contagious disease; [f] Who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos; [g] Citizens or subjects of nations with whom the Philippines is at war, during the period of such war; [h] Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

c) *Procedure:*

i) Filing of declaration of intention one year prior to the filing of the petition with the Office of the Solicitor General. The following are exempt from filing declaration of intention:

ia) Born in the Philippines and have received their primary and secondary education in public or private schools recognized by the Government and not limited to any race or nationality.

ib) Resided in the Philippines for 30 years or more before the filing of the petition, and enrolled his children in elementary and high schools recognized by the Government and not limited to any race or nationality.

ic) Widow and minor children of an alien who has declared his intention to become a citizen of the Philippines and dies before he is actually naturalized.

ii) Filing of the petition, accompanied by the affidavit of two credible persons, citizens of the Philippines, who personally know the petitioner, as character witnesses.

iii) Publication of the petition. Under Sec. 9, Revised Naturalization Law, in order that there be a valid publication, the following requisites must concur: (a) the petition and notice of hearing must be published; (b) the publication must be made once a week for three consecutive weeks; and (c) the publication must be in the Official Gazette and in a newspaper of general circulation in the province where the applicant resides. In addition, copies of the petition and notice of hearing must be posted in the office of the Clerk of Court or in the building where the office is located [*Republic v. Hamilton Tan Keh, G.R. No. 144742, November 11, 2004*], The same notice must also indicate, among others, the names of the witnesses whom the petitioner proposes to introduce at the trial [*Republic v. Michael Hong, G.R. No. 168877 March 23 2006*].'

iiia) Publication is a jurisdictional requirement. Noncompliance is fatal for it impairs the very root or foundation of the authority to decide the case, regardless of whether the one to blame is the clerk of court or the petitioner or his counsel [*Gan Tsitung v. Republic, 122 Phil. 805; Po Yo Bi v. Republic, 205 SCRA 400*].

iiib) This rule applies equally to the determination of the sufficiency of the contents of the notice of hearing and of the petition itself, because an incomplete notice or petition, even if published, is no publication at all. Thus, in *Sy v. Republic, 154 Phil. 673*, it was held that the copy of the petition to be posted and published should be a textual or verbatim restatement of the petition filed.

iiic) In the same vein, the failure to state all the required details in the notice of hearing, like the names of applicant's witnesses, constitutes a fatal defect. The publication of the affidavit of such witnesses did not cure the omission of their names in the notice of hearing. It is a settled rule that naturalization laws should be rigidly enforced and strictly construed in favour of the government and against the applicant [*Ong Chua v. Republic G R No 127240, March 27, 2000*].

- iv) Actual residence in the Philippines during the entire proceedings.
- v) Hearing of the petition.
- vi) Promulgation of the decision.
- vii) Hearing after two years. At this hearing, the applicant shall show that during the two-year probation period, applicant has (i) not left the

Philippines; (ii) dedicated himself continuously to a lawful calling or profession; (iii) not been convicted of any offense or violation of rules; and (iv) not committed an act prejudicial to the interest of the nation or contrary to any Government-announced policies.

viii) Oath taking and issuance of the Certificate of Naturalization.

[In *Republic v. de la Rosa*, 232 SCRA 785], and companion cases, the Supreme Court noted several irregularities which punctuated the petition and the proceedings in the application for naturalization of Juan C. Frivaldo, viz: the petition lacked several allegations required by Secs. 2 and 6 of the Naturalization Law; the petition and the order for hearing were not published once a week for three consecutive weeks in the Official Gazette and in a newspaper of general circulation; the petition was not supported by affidavits of two credible witnesses vouching for the good moral character of the petitioner; the actual hearing of the petition was held earlier than the scheduled date of hearing; the petition was heard within 6 months from the last publication; the petitioner was allowed to take the oath of allegiance before finality of the judgment, and without observing the two-year probationary period.]

d) *Effects of naturalization:* ,

i) Vests citizenship on wife if she herself may be lawfully naturalized (as interpreted by the Supreme Court in *Moy Ya Lim Yao v. Commissioner of Immigration, supra.*).

ia) In *Moy Ya Lim Yao*, the Court said that the alien wife of the naturalized Filipino need not go through the formal process of naturalization in order to acquire Philippine citizenship. All she has to do is to file before the Bureau of Immigration and Deportation a petition for the cancellation of her Alien Certificate of Registration (ACR). At the hearing on the petition, she does not have to prove that she possesses all the qualifications for naturalization; she only has to show that she does not labor under any of the disqualifications. Upon the grant of the petition for cancellation of the ACR, she may then take the oath of the allegiance to the Republic of the Philippines and thus, become a citizen of the Philippines.

ii) Minor children born in the Philippines before the naturalization shall be considered citizens of the Philippines.

iii) Minor child born outside the Philippines who was residing in the Philippines at the time of naturalization shall be considered a Filipino citizen.

iv) Minor child born outside the Philippines before parent's naturalization shall be considered Filipino citizens only during minority, unless he begins to reside permanently in the Philippines.

v) Child born outside the Philippines after parent's naturalization shall be considered a Filipino, provided that he registers as such before any Philippine consulate within one year after attaining majority age, and takes his oath of allegiance.

e) *Denaturalization.*

i} Grounds:

ia) Naturalization certificate is obtained fraudulently or illegally. In *Republic v. Li Yao*, 214 SCRA 748, the Supreme Court declared that a certificate of naturalization may be cancelled if it is subsequently discovered that the applicant obtained it by misleading the court upon any material fact. Availment of a tax amnesty does not have the effect of obliterating his lack of good moral character.

ib) If, within 5 years, he returns to his native country or to some foreign country and establishes residence there; provided, that 1-year stay in native country, or 2-year stay in a foreign country shall be *prima facie* evidence of intent to take up residence in the same.

ic) Petition was made on an invalid declaration of intention.

id) Minor children failed to graduate through the fault of the parents either by neglecting to support them or by transferring them to another school.

ie) Allowed himself to be used as a dummy.

[In *Republic v. Guy*, 115 SCRA 244, although the misconduct was committed after the two-year probationary period, conviction of perjury and rape was held to be valid ground for denaturalization.]

ii) Effects of denaturalization: If the ground for denaturalization affects the intrinsic validity of the proceedings, the denaturalization shall divest the wife and children of their derivative naturalization. But if the ground was personal to the denaturalized Filipino, his wife and children shall retain their Philippine citizenship.

5. *Naturalization by direct legislative action.* This is discretionary on Congress; usually conferred on an alien who has made outstanding contributions to the country.

6. *Administrative Naturalization [R.A. 9139].* The "Administrative Naturalization Law of 2000" would grant Philippine citizenship by administrative proceedings to aliens born and residing in the Philippines. In *So v. Republic*, G.R. No. 170603, January 29, 2007, the Supreme Court declared that CA 473 and RA 9139 are separate and distinct laws. The former covers aliens regardless of class, while the latter covers native-born aliens who lived in the Philippines all their lives, who never saw any other country and all along thought that they were Filipinos, who have demonstrated love and loyalty to the Philippines and affinity to Filipino customs and traditions. The intention of the legislature in enacting RA 9139 was to make the process of acquiring Philippine citizenship less tedious, less technical, and more encouraging. There is nothing in the law from which it can be inferred that CA473 is intended to be annexed to or repealed by RA 9139. What the legislature had in mind was merely to prescribe another mode of acquiring Philippine citizenship which may be availed of by native-born aliens. The only implication is that a native-born alien has the choice to apply for judicial or administrative naturalization, subject to the prescribed qualifications and disqualifications.

a) Special Committee on Naturalization. Composed of the Solicitor General, as chairman, the Secretary of Foreign Affairs or his representative, and the National Security Adviser, as members, this Committee has the power to approve, deny or reject applications for naturalization under this Act.

b) Qualifications: Applicant must [1] be born in the Philippines and residing therein since birth; [2] not be less than 18 years of age, at the time of filing of his/her petition; [3] be of good moral character and believes in the underlying principles of the Constitution and must have conducted himself/ herself in a proper and irreproachable manner during his/her entire period of residence in the Philippines in his relations with the duly constituted government as well as with the community in which he/she is living; [4] have received his/her primary and secondary education in any public school or private educational institution duly recognized by the Department of Education, where Philippine history, government and civics are taught and prescribed as part of the school curriculum and where enrolment is not limited to any race or nationality, provided that should he/she have minor children of school age, he/she must have enrolled them in similar schools; [5] have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her support and that of his/her family; provided that this shall not apply to applicants who are college degree holders but are unable to

practice their profession because they are disqualified to do so by reason of their citizenship; [6] be able to read, write and speak Filipino or any of the dialects of the Philippines; and [7] have mingled with the Filipinos and evinced a sincere desire to learn and embrace the customs and traditions and ideals of the Filipino people.

c) Disqualifications: The same as those provided in C.A. 473.

d) Procedure: Filing with the Special Committee on Naturalization of a petition (see Sec. 5, RA 9139, for contents of the petition); publication of pertinent portions of the petition once a week for three consecutive weeks in a newspaper of general circulation, with copies thereof posted in any public or conspicuous area; copies also furnished the Department of Foreign Affairs, Bureau of Immigration and Deportation, the civil registrar of petitioner's place of residence and the National Bureau of Investigation which shall post copies of the petition in any public or conspicuous areas in their buildings offices and premises, and within 30 days submit to the Committee a report stating whether or not petitioner has any derogatory record on file or any such relevant and material information which might be adverse to petitioner's application for citizenship; Committee shall, within 60 days from receipt of the report of the agencies, consider and review all information received pertaining to the petition (if Committee receives any information adverse to the petition, the Committee shall allow the petitioner to answer, explain or refute the information); Committee shall then approve or deny the petition. Within 30 days from approval of the petition, applicant shall pay to the Committee a fee of P100,000, then take the oath of allegiance and a certificate of naturalization shall issue. Within 5 days after the applicant has taken his oath of allegiance, the Bureau of Immigration shall forward a copy of the oath to the proper local civil registrar, and thereafter, cancel petitioner's alien certificate of registration.

e) Status of Alien Wife and Minor Children. After the approval of the petition for administrative naturalization and cancellation of the applicant's alien certificate of registration, applicant's alien lawful wife and minor children may file a petition for cancellation of their alien certificates of registration with the Committee, subject to the payment of the required fees. But, if the applicant is a married woman, the approval of her petition for administrative naturalization shall not benefit her alien husband, although her minor children may still avail of the right to seek the cancellation of their alien certificate of registration.

f) Cancellation of the Certificate of Naturalization. The Special Committee on Naturalization may cancel certificates of naturalization issued under this act in the following cases: [1] if the naturalized person or his duly authorized representative made any false statement or misrepresentation,

or committed any violation of law, rules and regulations in connection with the petition, or if he obtains Philippine citizenship fraudulently or illegally; [2] if, within five years, he shall establish permanent residence in a foreign country, provided that remaining for more than one year in his country of origin or two years in any foreign country shall be *prima facie* evidence of intent to permanently reside therein; [3] if allowed himself or his wife or child with acquired citizenship to be used as a dummy; [4] if he, his wife or child with acquired citizenship commits any act inimical to national security.

D. *Loss and Reacquisition of Philippine Citizenship* (C.A. 63).

1. *Loss of citizenship.*

a) Bv naturalization in a foreign country. See *Frivaldo v. Comelec*, 174SCRA245.

i) However, this is modified by R.A. 9225, entitled *An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent* (which took effect September 17, 2003), which declares the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

ii) Natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic: 7 _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion." [Sec. 3, R.A. 9225]

iii) Natural-born citizens of the Philippines who, after the effectiveness of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath [Sec. 3, R.A. 9225].

iv) The unmarried child, whether legitimate, illegitimate or adopted, below 18 years of age, of those who reacquire Philippine citizenship upon the effectiveness of this Act shall be deemed citizens of the Philippines [Sec. 4, R.A. 9225].

v) Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

va) Those intending to exercise their right of suffrage must meet the requirements under Sec. 1, Art. V of the Constitution, R.A. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

vb) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

vb1) In *Eusebio Eugenio Lopez v. Comelec*, G.R. No. 182701, July 23, 2008, reiterated in *Jacotv. Dal and Comelec*, G.R. No. 179848, November 27, 2008, it was held that a Filipino-American, or any dual citizen cannot run for elective public office in the Philippines unless he personally swears to a renunciation of all foreign citizenship at the time of filing of the certificate of candidacy. The mere filing of a certificate of candidacy is not sufficient; Sec. 5 (2) of R.A. 9225 categorically requires the individual to state in clear and unequivocal terms that he is renouncing all foreign citizenship, failing which, he is disqualified from running for an elective position. The fact that he may have won the elections, took his oath and began discharging the functions of the office cannot cure the defect of his candidacy. The doctrine laid down in *Valles v. Comelec*, *supra*., and *Mercado v. Manzano*, *supra*., does not apply.

vc) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office; Provided, That they renounce their oath of allegiance to the country where they took that oath;

vd) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice;

ve) The right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who: (1) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or (2) are in active service as commissioned

or non-commissioned officers in the armed forces of the country which they are naturalized citizens [Sec. 5, R.A. 9225].

b) By express renunciation of citizenship. In *Board of Immigration Commissioners v. Go Callano*, 25 SCRA 890, it was held that express renunciation means a renunciation that is made known distinctly and explicitly, and not left to inference or implication. Thus, in *Labo v. Comelec*, 176 SCRA 1, it was held that Labo lost Filipino citizenship because he expressly renounced allegiance to the Philippines when he applied for Australian citizenship.

i) In *Valles v. Comelec*, *supra*., it was held that the fact that private respondent was born in Australia does not mean that she is not a Filipino. If Australia follows the principle of *jus soli*, then at most she can also claim Australian citizenship, resulting in her having dual citizenship. That she was a holder of an Australian passport and had an alien certificate of registration do not constitute effective renunciation, and do not militate against her claim, of Filipino citizenship. For renunciation to effectively result in the loss of citizenship, it must be express.

ii) But see *Willie Yu v. Defensor-Santiago*, 169 SCRA 364, where obtention of a Portuguese passport and signing of commercial documents as a Portuguese were construed as renunciation of Philippine citizenship.

c) Bv subscribing to an oath of allegiance to support the Constitution or laws of a foreign country upon attaining 21 years of age; Provided, however, that a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country.

i) This should likewise be considered modified by R.A. 9225.

ii) The proviso that a Filipino may not divest himself of Philippine citizenship in this manner while the Republic of the Philippines is at war with any country may be considered as an application of the *principle of indelible allegiance*.

d) Bv rendering service to or accepting commission in the armed forces of a foreign country; Provided, that the rendering of service to, or acceptance of such commission in, the armed forces of a foreign country and the taking of an oath of allegiance incident thereto, with consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present: (i) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country;

or (ii) The said foreign country maintains armed forces in Philippine territory with the consent of the Republic of the Philippines.

e) Bv cancellation of the certificate of naturalization.

f) By having been declared by competent authority a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted.

2. *Reacquisition of citizenship.*

a) Under R.A. 9225, bv taking the oath of allegiance required of former natural-born Philippine citizens who may have lost their Philippine citizenship by reason of their acquisition of the citizenship of a foreign country.

b) By naturalization, provided that the applicant possesses none of the disqualifications prescribed for naturalization.

i) In *Republic v. Judge de la Rosa, supra.*, the naturalization proceeding was so full of procedural flaws that the decision granting Filipino citizenship to Governor Juan Frivaldo was deemed a nullity.

c) By repatriation of deserters of the Army, Navy or Air Corps, provided that a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status.

i) See P.D. 725, which allows repatriation of former natural-born Filipino citizens who lost Filipino citizenship.

ia) In *Frivaldo v. Comelec* and *Lee v. Comelec*, 257 SCRA 727, the Supreme Court held that P.D. 725 was not repealed by President Aquino's Memorandum of March 27, 1986, and, thus, was a valid mode for the reacquisition of Filipino citizenship by Sorsogon Governor Juan Frivaldo.

ib) The Special Committee on Naturalization created by PD 725, chaired by the Solicitor General with the Undersecretary of Foreign Affairs and the Director of the NICA as members, was reactivated on June 8, 1995, and it is before this Committee that a petition for repatriation is filed [*Angat v. Republic*, G.R. No. 132244, September 14, 1999].

ii) *When repatriation takes effect.* In *Frivaldo v. Comelec*, 257 SCRA 727, it was held that repatriation of Frivaldo retroacted to the date of

filing of his application on August 17, 1994. In *Altarejos v. Comelec*, G.R. No. 163256, November 10, 2004, the same principle was applied. Petitioner took his Oath of Allegiance on December 17, 1997, but his Certificate of Repatriation was registered with the Civil Registry of Makati only after six years, or on February 18, 2004, and with the Bureau of Immigration on March 1, 2004. He completed all the requirements for repatriation only after he filed his certificate of candidacy for a mayoralty position, but before the elections. But because his repatriation retroacted to December 17-, 1997, he was deemed qualified to run for mayor in the May 10, 2004 elections.

iii) *Effect of repatriation.* In *Bengzon III v. House of Representatives Electoral Tribunal*, G.R. No. 142840, May 7, 2001, the Supreme Court ruled that the act of repatriation allows the person to recover, or return to, his original status before he lost his Philippine citizenship. Thus, respondent Cruz, a former natural-born Filipino citizen who lost his Philippine citizenship when he enlisted in the United States Marine Corps, was deemed to have recovered his natural-born status when he reacquired Filipino citizenship through repatriation.

iv) *Repatriation under R. A. 8171* (lapsed into law on October 23, 1995). The law governs the repatriation of Filipino women who may have lost Filipino citizenship by reason of marriage to aliens, as well as the repatriation of former natural-born Filipino citizens who lost Filipino citizenship on account of political or economic necessity, including their minor children, provided the applicant is not a person [a] opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing organized government; [b] defending or teaching the necessity or propriety of violence, personal assault or assassination for the predominance of his ideas; [c] convicted of a crime involving moral turpitude; or [d] suffering from mental alienation or incurable contagious disease. Repatriation is effected by taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper Civil Registry and in the Bureau of Immigration and Deportation.

iva) In *Tabasa v. Court of Appeals*, G.R. No. 125793, August 29, 2006, Joevanie Tabasa, a natural-born citizen of the Philippines, acquired American citizenship through derivative naturalization when, still a minor, his father became a naturalized citizen of the United States. On October 3, 1995, he was admitted to the Philippines as a "balikbayan", but within a year, he was charged by the Bureau of Immigration and Deportation (BID), because it appeared that the US Department of Justice had revoked his passport and was the subject of an outstanding federal warrant of arrest for possession of firearms and one count of sexual battery. Finding him an undocumented and undesirable alien, the BID ordered his deportation. After learning of the BID

order, he then immediately executed an Affidavit of Repatriation and took an oath of allegiance to the Republic of the Philippines. On the issue of whether he validly reacquired Philippine citizenship, the Supreme Court ruled in the negative. The privilege of RA 8171 is available only to natural-born Filipinos who lost their citizenship on account of political or economic necessity and to their minor children. This means that if a parent who had renounced his Philippine citizenship due to political or economic reasons later decides to repatriate under RA8171, his repatriatioin will also benefit his minor children. Thus, to claim the benefit of RA 8171, the children must be of minor age at the time the petition for repatriation is filed by the parent. This is so because a child does not have the legal capacity to undertake a political act like the election of citizenship. On their own, the minor children cannot apply for repatriation or naturalization separately from the parents. Tabasa is not qualified to avail himself of repatriation under RA8171.

- d) By direct act of Congress.

VIII. THE LEGISLATIVE DEPARTMENT

A. The Legislative Power

1. *Defined:* The power to propose, enact, amend and repeal laws.
2. *Where vested.* In the Congress, except to the extent reserved to the people by the provision on initiative and referendum.
 - a) 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 [*Sec. 32, Art. VI*],
 - i) In compliance with the constitutional mandate, Congress passed Republic Act No. 6735 [approved by President Aquino on August 4, 1989], known as an Act Providing for a System of Initiative and Referendum.
 - ia) *Initiative* is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. There are three systems of initiative, namely: Initiative on the Constitution which refers to a petition proposing amendments to the Constitution; Initiative on statutes which refers to a petition proposing to enact a national legislation; and Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance. *Indirect initiative* is the exercise of initiative by the people through a proposition sent to Congress or local legislative body for action [*Sec. 2, R. A. 6735*], *Referendum* is the power of the electorate to approve or reject legislation through an election called for the purpose. It may be of two classes, namely: Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and 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), R. A. 6735*].
 - ib) *Prohibited measures.* The following cannot be the subject of an initiative or referendum petition: No petition embracing more than one subject shall be submitted to the electorate; and 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, R. A. 6735].

ic) 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, R. A. 6735].

id) Limitations on Local Initiative: (a) The power of local initiative shall not be exercised more than once a year; (b) Initiative shall extend only to subjects or matters which are within the legal powers of the local legislative bodies to enact; and (c) If at 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 initiative.

B. Congress.

1. *Composition* [Sec. 1, Art. VI], A Senate and a House of Representatives.
2. *Bicameralism vs. Unicameralism*.

C. The Senate.

1. *Composition* [Sec. 2, Art. VI]: Twenty-four Senators elected at large by the qualified voters of the Philippines, as may be provided by law.
2. *Qualifications of Senator* [Sec. 3, Art. VII]: Natural-born citizen of the Philippines, and, on the day of the election, at least 35 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 the election.
3. *Term of Office* [Sec. 4, Art. VI]: Six years, commencing at noon on the 30th day of June next following their election.

a) Limitation: No Senator shall serve for more than two consecutive terms. 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 elected.

D. House of Representatives.

1. *Composition [Sec. 5(1) and (2), Art. VI]:* Not more than 250 members, unless otherwise provided by law, consisting of:

a) District representatives, elected from legislative districts apportioned among the provinces, cities and the Metropolitan Manila area.

b) Party-list representatives, who shall constitute *twenty per centum* of the total number of representatives, elected through a party-list system of registered national, regional, and sectoral parties or organizations.

c) Sectoral representatives. For three consecutive terms after the ratification of the Constitution, one-half of the seats allocated to party-list representatives shall be filled, as 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.

i) Until a law is passed, the President may fill by appointment from a list of nominees by the respective sectors the seats reserved for sectoral representation [*Sec. 7, Art. XVIII, 1987*]. These appointments shall be subject to confirmation by the Commission on Appointments [*Quintos-Deles v. Committee on Constitutional Commissions, Commission on Appointments, 177 SCRA 259*].

2. *Apportionment of legislative districts [Sec. 5(3) and (4), Art. VI]:* The question of the validity of an apportionment law is a justiciable question [*Macias v. Comelec, 3 SCRA 1*].

a) Apportionment shall be made in accordance with the number of respective inhabitants [among provinces, cities and Metro Manila area], on the basis of a uniform and progressive ratio. But: (i) each city with not less than 250,000 inhabitants shall be entitled to at least one representative; and (ii) Each province, irrespective of number of inhabitants, is entitled to at least one representative.

b) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. This is intended to prevent *gerrymandering*.

c) Congress to make reapportionment of legislative districts within three years following the return of every census.

i) In *Mariano v. Comelec*, *supra*., the Court held that the Constitution does not preclude Congress from increasing its membership by passing a law other than a general apportionment law. In fact, in *Tobias v. Abalos*, 239 SCRA 106, it ruled that reapportionment of legislative districts may be made through a special law. To hold that reapportionment can be made only through a general law would create an inequitable situation where a new city or province created by Congress will be denied legislative representation for an indeterminate period of time. That intolerable situation would deprive the people in the new city or province a particle of their sovereignty. Sovereignty cannot admit of subtraction; it is indivisible. It must be forever whole or it is not sovereignty.

ii) In *Montejo v. Comelec*, *supra*., it was held that while concededly the conversion of Biliran into a regular province brought about an imbalance in the distribution of voters and inhabitants in the 5 districts of Leyte, the issue involves reapportionment of legislative districts, and petitioner's remedy lies with Congress. This Court cannot itself make the reapportionment as petitioner would want.

iii) Thus, in *Sema v. Comelec*, G.R. No. 177597, July 16, 2008, the Supreme Court ruled that Congress cannot validly delegate to the ARMM Regional Assembly the power to create legislative districts, nothing in Sec. 20, Article X of the Constitution, authorizes autonomous regions, expressly or impliedly, to create or reapportion legislative districts. The power to increase the allowable membership in the House of Representatives and to reapportion legislative districts is vested exclusively in Congress. Accordingly, Sec. 19, Art. VI of R.A. 9054, granting the ARMM Regional Assembly the power to create provinces and cities, is void for being contrary to Sec. 5, Art. VI, and Sec. 20, Art. X, as well as Sec. 3 of the Ordinance appended to the Constitution.

3. *Qualifications [Sec. 6, Art. VI]*: Natural-born Filipino citizen, and, on the day of the election, at least 25 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 not less than one year immediately preceding the day of the election.

a) In *Imelda Romualdez-Marcos v. Comelec*, 248 SCRA 300, the Court upheld the qualification of Mrs. Imelda Romualdez Marcos (IRM), despite her own declaration in her certificate of candidacy that she had resided in the district for only seven months, because of the following: (i) A minor follows the domicile of his parents; Tacloban became IRM's domicile of origin by operation of law when her father brought the family to Leyte; (ii) Domicile of origin is lost only when there is actual removal or change of domicile, a bona fide intention

of abandoning the former residence and establishing a new one, and acts which correspond with the purpose; in the absence of clear and positive proof of the concurrence of all these, the domicile of origin should be deemed to continue; (iii) The wife does not automatically gain the husband's domicile because the term "residence" in Civil Law does not mean the same thing in Political Law; when IRM married Marcos in 1954, she kept her domicile of origin and merely gained a new home, not a *domicilium necessarium*, (iv) Even assuming that she gained a new domicile after her marriage and acquired the right to choose a new one only after her husband died, her acts following her return to the country clearly indicate that she chose Tacloban, her domicile of origin, as her domicile of choice.

b) In *Aquino v. Comelec*, 248 SCRA 400, it was held that Agapito Aquino failed to prove that he had established not just residence but domicile of choice in Makati. In his certificate of candidacy for the 1992 elections, he indicated that he was a resident of San Jose, Concepcion, Tarlac, for 52 years; he was a registered voter of the same district; his birth certificate places Concepcion, Tarlac, as birthplace. Thus, his domicile of origin was Concepcion, Tarlac; and his bare assertion of transfer of domicile from Tarlac to Makati is hardly supported by the facts of the case. [NOTE: Read the Theory of Legal Impossibility. enunciated in Justice Francisco's concurring and dissenting opinion.]

c) In *Coquilla v. Comelec*, G.R.No. 151914, July 31, 2002, the Supreme Court ruled that the petitioner had not been a resident of Oras, Eastern Samar, for at least one year prior to the May 14, 2001 elections. Although Oras was his domicile of origin, petitioner lost the same when he became a US citizen after enlisting in the US Navy. From then on, until November 10, 2000, when he reacquired Philippine citizenship through repatriation, petitioner was an alien without any right to reside in the Philippines. In *Caasi v. Comelec*, *infra*., it was held that immigration to the US by virtue of the acquisition of a "green card" constitutes abandonment of domicile in the Philippines.

4. *Term of office [Sec. 7, Art. VI]*: Three years, commencing at noon on the 30th day of June next following their election. Limitation: Shall not serve for more than three consecutive terms.⁵

5. *The Party-List System [R.A. 7941 (The Party-List System Act)]*: The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections.

a) Definition of terms:

i) *Party* means either a political party or a sectoral party or a coalition of parties.

ii) *Political party* refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office. It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

iii) *Sectoral party* refers to an organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals, whose principal advocacy pertains to the special interest and concerns of their sector.

iv) *Sectoral organization* refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

v) *Coalition* refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

b) Registration: Manifestation to Participate in the Party-List System Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the Comelec not later than 90 days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations. Any party, organization or coalition already registered with the Comelec need not register anew, but shall file with the Comelec not later than 90 days before the election a manifestation of its desire to participate in the party-list system.

c) Refusal and/or Cancellation of Registration. The Comelec may, *motu proprio* 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: (i)

it is a religious sect or denomination, organization or association organized for religious purposes; (ii) it advocates violence or unlawful means to seek its goal; (iii) it is a foreign party or organization; (iv) 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; (v) it violates or fails to comply with laws, rules or regulations relating to elections; (vi) it declares untruthful statements in its petition; (vii) it has ceased to exist for at least one year; and (viii) 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 has registered.

d) Nomination of party-list representatives. Each registered party, organization or coalition shall submit to the Comelec not later than 45 days before the election a list of names, not less than five, from which party-list representatives shall be chosen in case it obtains the required number of votes. A person may be nominated in one list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change shall be allowed after the list shall have been submitted to the Comelec except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated, in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

e) Qualifications of Party-List nominees: Natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for at least one year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least 90 days preceding the day of the election, and is at least 25 years of age on the day of the election. For the youth sector, he must be at least 25 years of age but not more than 30 years of age on the day of the election. Any youth representative who attains the age of 30 during his term shall be allowed to continue in office until the expiration of his term.

f) Manner of Voting. Every voter shall be entitled to two votes: the first is a vote for the candidate for member of the House of Representatives in his legislative district, and the second, a vote for the party, organization or coalition he wants represented in the House of Representatives; provided that a vote cast for a party, sectoral organization or coalition not entitled to be voted for shall not be counted.

i) In *Bantay Republic Act or BA-RA 7941 v. Comelec*, G.R. No. 171271, May 4, 2007, the Supreme Court held that the Commission on Elections has a constitutional duty to disclose and release the names of the nominees of the party-list groups, citing Sec. 7, Article III of the Constitution on the right of the people to information on matters of public concern as complemented by the policy of full disclosure and transparency in Government.

g) Number. The party-list representatives shall constitute 20% of the total number of the members of the House of Representatives including those under the party-list. For purposes of the May, 1998, elections, the first five major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to representation in the party-list system. In determining the allocation of seats for the second vote, the following procedure shall be observed: (i) the parties, organizations and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections; and (ii) the parties, organizations and coalitions receiving at least 2% of the total votes cast for the party-list system shall be entitled to one-seat each; provided, that those garnering more than 2% of the votes shall be entitled to additional seats in proportion to their total number of votes; provided, finally, that each party, organization or coalitions shall be entitled to not more than three (3) seats. •

i) In *Veterans Federation Party v. Comelec*, G.R. No. 136781, October 6, 2000, the Supreme Court reversed the Comelec ruling that the 38 respondent parties, coalitions and organizations were each entitled to a party-list seat despite their failure to obtain at least 2% each of the national vote in the 1998 party-list election. The Court said that the Constitution and RA 7941 mandate at least four inviolable parameters: [a] the 20% allocation- the combined number of all party-list congressmen shall not exceed 20% of the total membership of the House of Representatives; [b] the 2% threshold- only those parties garnering a minimum of 2% of the total valid votes cast for the party-list system are qualified to have a seat in the House; [c] the three-seat limit: each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats, i.e., one qualifying and two additional; ^{an<^} M proportional representation: the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes".

ia) In *Partido ng Manggagawa (PM) and Butil Farmers Party (Butil) v. Comelec*, G.R. No. 164702, March 15, 2006 petitioners party-list groups sought the immediate proclamation by the Comelec of their respective second nominee, claiming that they were entitled to one (1) additional seat in the House of Representatives based on the number of votes they obtained

and on the formula used by the Supreme Court in *Ang Bagong Bayani*. The Court held that the formula used in the landmark case of *Veterans Federation Party*, which is:

$$\text{Additional seats} = \frac{\text{Votes cast for Qualified Party}}{\text{Votes cast for First Party}} \times \text{Allotted seats for First Party}$$

shall be followed. *Ang Bagong Bayani* merely reiterated this formula for computing the additional seats which a party-list group shall be entitled to.

ii) In *Ang Bagong Bayani - OFW Labor Party v. Comelec*, G.R. No. 147589, June 26, 2001, the Supreme Court said that even if major political parties are allowed by the Constitution to participate in the party-list system, they must show, however, that they represent the interests of the marginalized and under-represented.. The following guidelines should be followed in order that a political party registered under the party-list system may be entitled to a seat in the House of Representatives: [a] must represent marginalized and under-represented sectors; [b] major political parties must comply with this statutory policy; [c] Ang Bagong Buhay Hayaang Yumabong (as a party) must be subject to the express constitutional prohibition against religious sects; [d] the party must not be disqualified under RA 7941; [e] the party must not be an adjunct of an entity or project funded by the government; [f] the party and its nominees must comply with the requirements of the law; [g] the nominee must also represent a marginalized or under-represented sector; and [h] the nominee must be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation.

h) Choosing Party-List Representatives. Party-list representatives are proclaimed by the Comelec based on the list of names submitted by the respective parties, organizations or coalitions to the Comelec according to their ranking in the list.

i) Effect of change of affiliation. Any elected party-list representative who changes his political party or sectoral affiliation during his term of office shall forfeit his seat; provided that if he changes his political party or sectoral affiliation within 6 months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization.

j) Vacancy. In case of vacancy in the seats reserved for party- list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the Comelec

by the same party, organization or coalition, who shall serve for the unexpired term. If the list is exhausted, the party, organization or coalition concerned shall submit additional nominees.

k) *Term of office: rights.* Party-list representatives shall be elected for a term of three (3) years, and shall be entitled to the same salaries and emoluments as regular members of the House of Representatives.

E. Election.

1. *Regular:* Unless otherwise provided by law, on the second Monday of May [Sec. 8, Art. VI].

2. *Special:* To fill a vacancy, but elected member shall serve only for the unexpired portion of the term [Sec. 9, Art. VI]. See R.A. 6645; *Lozada v Comelec*, 120 SCRA 337.

F. Salaries. [Sec. 10, Art. VI - “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.”] See *Philconsa v. Mathay*, 18 SCRA 300; *Ligot v. Mathay*, 56 SCRA 823.

G. Privileges [Sec. 11, Art. VI].

1. *Freedom from arrest* [“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.”]

, a) This is reinforced by Art. 145, Revised Penal Code, which provides: “The penalty of prision mayor shall be imposed upon any person who shall use force, intimidation, threats or fraud to prevent any member of the National Assembly from attending the meetings of the Assembly or of any of its committees or subcommittees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of prision correccional shall be imposed upon any public officer or employee who shall, while the Assembly is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than prision mayor.”.

b) In *People v. Jalosjos*, G.R. No. 132875, February 3, 2000, the Supreme Court denied the motion of Congressman Jalosjos that he be

allowed to fully discharged the duties of a Congressman, including attendance at legislative sessions and committee hearings despite his having been convicted by the trial court of a non-bailable offense. The denial was premised on the following: [i] membership in Congress does not exempt an accused from statutes and rules which apply to validly incarcerated persons; [ii] one rationale behind confinement, whether pending appeal or after final conviction, is public self-defense, i.e., it is the injury to the public, not the injury to the complainant, which state action in criminal law seeks to redress; [iii] it would amount to the creation of a privileged class, without justification in reason, if notwithstanding their liability for a criminal offense, they would be considered immune from arrest during their attendance in Congress and in going to and returning from the same; and [iv] accused-appellant is provided with an office at the House of Representatives with a full complement of staff, as well as an office at the Administration Building, New Bilibid Prison, where he attends to his constituents; he has, therefore, been discharging his mandate as member of the House of Representatives, and being a detainee, he should not even be allowed by the prison authorities to perform these acts.

c) A similar ruling was made in *Trillanes IV v. Judge Pimentel*, G.R. No. 179817, June 27, 2008. In this case, petitioner Antonio Trillanes sought from the Makati RTC leave to attend Senate sessions and to convene his staff, resource persons and guests and to attend to his official functions as Senator. He anchored his motion on his right to be presumed innocent, and claims that the *Jalosjos* ruling should not be applied to him, because he is a mere detention prisoner and is not charged with a crime involving moral turpitude. The Makati RTC denied the motion. Elevating the matter, the Supreme Court denied Trillanes' petition on the ground that Sec. 13, Art. III of the Constitution, explicitly provides that crimes punishable by reclusion perpetua are nonbailable. The Court further said that the presumption of innocence does not necessarily carry with it the full enjoyment of civil and political rights.

2. *Privilege of speech and of debate* ["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) Note that the member of Congress may be held to account for such speech or debate by the House to which he belongs. See *Osmena v. Pendatun*, 109 Phil. 863; *Jimenez v. Cabangbang*, 17 SCRA 876.

H. Disqualifications [Sec. 13, Art. VI],

1. *Incompatible office* ["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 corporations or their subsidiaries during his term without forfeiting his seat. "].

a) Forfeiture of the seat in Congress shall be automatic upon the member's assumption of such other office deemed incompatible with his seat in Congress. See *Adaza v. Pacana*, 135 SCRA 431. However, no forfeiture shall take place if the member of Congress holds the other government office in an *ex officio* capacity, e.g., membership in the Board of Regents of the University of the Philippines of the Chairman, Committee on Education, in the Senate.

2. *Forbidden office* [*"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."*]. The ban against appointment to the office created or the emoluments thereof increased shall, however, last only for the duration of the term for which the member of Congress was elected.

I. Other inhibitions [Sec. 14, Art. VI: *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 or 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. What is prohibited is "personally" appearing as counsel.
2. Upon assumption of office, must make a full disclosure of financial and business interests. Shall notify House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors [Sec. 12, Art. VI],

J. Sessions:

1. *Regular*: "*Congress shall convene once every year on the fourth Monday of July, unless a different date is fixed by law, and shall continue 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*" [Sec. 15, Art. VI],

2. *Special: "The President may call a special session at any time" [Sec. 15, Art. VI].* A special session may be called by the President at any time, usually to consider legislative measures which the President may designate in his call.

3. *Joint sessions:*

a) Voting separately:

- i) Choosing the President [Sec. 4, Art. VII].
- ii) Determine President's disability [Sec. 11, Art. VII].
- iii) Confirming nomination of the Vice President [Sec. 9, Art. VII].
- iv) Declaring the existence of a state of war [Sec. 23, Art. VI],
- v) Proposing constitutional amendments [Sec. 1, Art. XVII],

b) Voting jointly: To revoke or extend proclamation suspending the privilege of the writ of habeas corpus or placing the Philippines under martial law [Sec. 18, Art. VII].

4. *Adjournment. "Neither House during the sessions 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" [Sec. 16 (5), Art. VI].*

K. *Officers [Sec. 16(1), Art. VI]:* Senate to 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.

L. *Quorum [Sec. 16(2), Art. VI]:* A majority of each House, 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 determine. See *Avelino v. Cuenco*, 83 Phil 17, which is authority for the principle that the basis in determining the existence of a quorum in the Senate shall be the total number of Senators who are in the country and within the coercive jurisdiction of the Senate. In its Resolution on the Motion for Reconsideration in *Arroyo v. De Venecia*, G.R. No. 127255, June 26, 1998, the Supreme Court declared that 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.

M. *Rules of proceedings [Sec. 16(3), Art. VI]:* Each House may determine the rules of its proceedings. See *Pacete v. Secretary of the Commission on Appointments*, 40 SCRA 58.

N. Discipline of members [Sec. 16(3), Art. VI]: House may punish its members for disorderly behavior, and, with the concurrence of 2/3 of all its members, suspend (for not more than sixty days) or expel a member. See *Osmena v. Pendatun*, 109 Phil 863, where the Supreme Court said that the determination of the acts which constitute disorderly behavior is within the full discretionary authority of the House concerned, and the Court will not review such determination, the same being a political question.

1. The suspension contemplated in the Constitution is different from the suspension prescribed in the Anti-Graft and Corrupt Practices Act [RA 3019]. The latter is not a penalty but a preliminary preventive measure and is not imposed upon the petitioner for misbehavior as a member of Congress [*Paredes v. Sandiganbayan*, G.R. No. 118364, August 10, 1995]. The Supreme Court clarified this ruling in *Miriam Defensor-Santiago v. Sandiganbayan*, G.R. No. 128055, April 18, 2001, saying that Sec. 13, RA 3019 (where it appears to be a ministerial duty of the court to issue the order of suspension upon a determination of the validity of the criminal information filed before it) does not state that the public officer should be suspended only in the office where he is alleged to have committed the acts charged. Furthermore, the order of suspension provided in RA 3019 is distinct from the power of Congress to discipline its own ranks. Neither does the order of suspension encroach upon the power of Congress. The doctrine of separation of powers, by itself, is not deemed to have effectively excluded the members of Congress from RA 3019 or its sanctions.

O. Records and books of accounts [Sec. 20, Art. VI]: Preserved and open to the public in accordance with law; books shall be audited by COA which shall publish annually an itemized list of amounts paid to and expenses incurred for each member.

P. Legislative Journal and the Congressional Record. "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." [Sec. 16(4), Art. VI].¹

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

2. *Enrolled Bill Theory.* An enrolled bill is one duly introduced and finally passed by both Houses, authenticated by the proper officers of each, and approved by the President. The enrolled bill is conclusive upon the courts as regards the tenor of the measure passed by Congress and approved by the President. 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*, 78 Phil 1; *Arroyo v. De Venecia*, G.R. No. 127255, August 14, 1997]. If a mistake was made in the printing of the bill before it was certified by Congress and approved by the President, the remedy is amendment or corrective legislation, not a judicial decree [*Casco (Phil) Chemical Co. v. Gimenez*, 7 SCRA 347].

3. *Journal Entry vs. Enrolled Bill:* Enrolled bill prevails, except as to matters which, under the Constitution, must be entered in the Journal. See *Astorga v. Villegas*, 56 SCRA 714; *Morales v. Subido*, 26 SCRA 150.

4. *The Congressional Record.* Each House shall also keep a Record of its proceedings.

Q. Electoral Tribunals [Sec. 17, Art. VI].

1. *Composition:* Three Supreme Court justices designated by the Chief Justice, and six members of the house concerned chosen on the basis of proportional representation from the political parties registered under the party-list system represented therein. The Senior Justice shall be its Chairman.

a) The HRET was created as a non-partisan court. It must be independent of Congress and devoid of partisan influence and consideration. “Disloyalty to the party” and “breach of party discipline” are not valid grounds for the expulsion of a member. HRET members enjoy security of tenure; their membership may not be terminated except for a just cause such as the expiration of congressional term, death, resignation from the political party, formal affiliation with another political party, or removal for other valid causes [*Bondoc v. Pineda*, 201 SCRA 792]. See also *Tanada v. Cuenco*, 100 Phil 1101.

b) On the disqualification of the senator-members of the Senate Electoral Tribunal, because an election contest is filed against them, see *Abbas v. Senate Electoral Tribunal*, 166 SCRA 651, where the Supreme Court held that it cannot order the disqualification of the Senators-members of the Electoral Tribunal simply because they were themselves respondents in the electoral protest, considering the specific mandate of the Constitution and inasmuch as all the elected Senators were actually named as respondents.

c) In *Pimentel v. House of Representatives Electoral Tribunal*, G.R. No. 141489, November 29, 2002, the Supreme Court said that even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and Commission on Appointments, their primary recourse clearly rests with the House of Representatives and not with the Court. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and Commission on Appointments can the party-list representatives seek recourse from this Court through judicial review. Under the doctrine of primary administrative jurisdiction, prior recourse to the House is necessary before the petitioners may bring the case to Court.

2. Power. The Electoral Tribunals of the Houses of Congress shall be the sole judge of all contests relating to the election, returns and qualifications of their respective members.

a) In *Sampayan v. Daza*, 213 SCRA 807, involving a petition filed directly with the Supreme Court to disqualify Congressman Raul Daza for being allegedly a green card holder and a permanent resident of the United States, the Court held that it is without jurisdiction, as it is the HRET which is the sole judge of all contests relating to election, returns and qualifications of its members. Furthermore, the case is moot and academic, because Daza's term of office as member of Congress expired on June 30, 1992. The proper remedy should have been a petition filed with the Commission on Elections to cancel Daza's certificate of candidacy, or a quo warranto case filed with the HRET within ten days from Daza's proclamation.

i) But the HRET may assume jurisdiction only after the winning candidate (who is a party to the election controversy) shall have been duly proclaimed, has taken his oath of office and has assumed the functions of the office, because it is only then that he is said to be a member of the House [*Aquino v. Comelec*, 248 SCRA 400]. Thus, in *Vinzons-Chato v. Comelec*, G.R. No. 172131, April 2, 2007 the Court said that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the Comelec's jurisdiction over the election contest relating to his election, returns and qualifications ends, and the HRET's own jurisdiction begins. See also *Guerrero v. Comelec*, G.R. No. 137004, July 20, 2000.

b) The Electoral Tribunal is independent of the Houses of Congress [*Angara v. Electoral Commission*, 63 Phil 139; *Morlero v. Bocar*, 66 Phil 429], and its decisions may be reviewed by the Supreme Court only upon showing of grave abuse of discretion in a petition for certiorari filed under Rule 65 of the Rules of Court [*Pena v. House of Representatives Electoral Tribunal* G.R. No. 123037, March 21, 1997].

R. Commission on Appointments [Sec. 18, Art. VI].

1. *Composition:* The Senate President, as ex officio Chairman, 12 Senators and 12 Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties registered under the party-list system represented therein. The Chairman shall not vote except in case of a tie. See *Daza v. Singzon*, 180 SCRA 496; *Coseteng v. Mitra*, 187 SCRA 377; *Cunanan v. Tan*, 5 SCRA 1.

a) In *Guingona v. Gonzales*, 214 SCRA 789, the Supreme Court held that a political party must have at least two elected senators for every seat in the Commission on Appointments. Thus, where there are two or more political parties represented in the Senate, a political party/coalition with a single senator in the Senate cannot constitutionally claim a seat in the Commission on Appointments. It is not mandatory to elect 12 Senators to the Commission; what the Constitution requires is that there must be at least a majority of the entire membership.

2. *Powers.* The Commission shall act on all appointments submitted to it within 30 session days of Congress from their submission. The Commission shall rule by a majority vote of its members. The Commission shall meet only while Congress is in session, at the call of its Chairman or a majority of all its members. See *Sarmiento v. Mison*, 156 SCRA 549; *Deles v. Committee on Constitutional Commissions, Commission on Appointments*, 177 SCRA 259; *Bautista v. Salonga*, 172 SCRA 169.

a) The Commission on Appointments is independent of the two Houses of Congress; its employees are not, technically, employees of Congress. It has the power to promulgate its own rules of proceedings. But see: *Pacete v. Secretary, Commission on Appointments*, 40 SCRA 58.

S. Powers of Congress.

1. *General [plenary] legislative power [Sec. 1, Art. VI]*, Legislative power is the power to propose, enact, amend and repeal laws.

a) Limitations:

i) *Substantive:*

ia) *Express:* (ia1) Bill of rights [Art. III]; (ia2) On appropriations [Secs. 25 and 29 (1) & (2), Art. VI]; (ia3) On taxation [Secs. 28 and 29 (3), Art. VI; Sec. 4 (3), Art. XIV]; (ia4) On constitutional appellate jurisdiction of

the Supreme Court [Sec.30, Art. VI]; (ia5) No law granting a title of royalty or nobility shall be passed [Sec. 31, Art. VI]

ib) Implied: (ib1) Non-delegation of powers; and (ib2)
Prohibition against the passage of irrepealable laws.

ii) *Procedural:*

iia) Only one subject, to be expressed in the title thereof [Sec. 26, Art. VI]. See *Tio v. Videogram Regulatory Commission*, 151 SCRA 208; *Philconsa v. Gimenez*, 15 SCRA 479; *Lidasan v. Comelec*, 21 SCRA 496. In *Chiongbian v. Orbos, supra.*, it was held that the title is not required to be an index of the contents of the bill. It is sufficient compliance if the title expresses the general subject, and all the provisions of the statute are germane to that subject. In *Mariano v. Comelec, supra.*, it was declared that the creation of an additional legislative district need not be expressly stated in the title of the bill. In *Tatad v. Secretary of Energy, supra.*, it was held that a law having a single, general subject indicated in its title may contain any number of provisions, no matter how adverse they may be, so long as they are not inconsistent with or foreign to the general subject. In *Lacson v. Executive Secretary, G.R. No. 128096, January 20, 1999*, R.A. 8249 which "defines" the jurisdiction of the Sandiganbayan but allegedly "expands" said jurisdiction, does not violate the one-title-one-subject requirement. The expansion in the jurisdiction of the Sandiganbayan, if it can be considered as such, does not have to be expressly stated in the title of the law because such is the necessary consequence of the amendments. The requirement that every bill must have one subject expressed in the title is satisfied if the title is comprehensive enough, as in this case, to include subjects related to the general purpose which the statute seeks to achieve. In *Farinas v. Executive Secretary, G.R. No. 147387, December 10, 2003*, the Supreme Court said that Sec. 14 of R.A. 9006, which repealed Sec. 67, but left intact Sec. 68, of the Omnibus Election Code, is not a rider, because a rider is a provision not germane to the subject matter of the bill, and the title and objectives of R.A. 9006 are comprehensive enough to include the repeal of Sec. 67 of the Omnibus Election Code. It need not be expressed in the title, because the title is not required to be a complete index of its contents.

iib) Three readings on separate days: printed copies of bill in its final form distributed to Members three days before its passage, except when the President certifies to its immediate enactment to meet a public calamity or emergency; upon last reading, no amendment allowed, and vote thereon taken immediately and yeas and nays entered in the Journal [Sec. 26, Art. VI]. In *Tolentino v. Secretary of Finance, supra.*, it was held that the presidential certification dispensed with the requirement not only of printing but

also that of reading the bill on separate days. The “unless” clause must be read in relation to the “except” clause, because the two are really coordinate clauses of the same sentence. To construe the “except” clause as simply dispensing with the second requirement in the “unless” clause would not only violate the rules of grammar, it would also negate the very premise of the “except” clause, i.e., the necessity of securing the immediate enactment of a bill which is certified in order to meet a public calamity or emergency. This interpretation is also supported by the weight of legislative practice.

b) Legislative Process.

i) *Requirements as to bills:*

ia) Only one subject to be expressed in the title thereof.

ib) 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 [Sec. 24, Art. VI]. In *Tolentino v. Secretary of Finance, supra.*, it was held that RA 7716 (Expanded VAT Law) did not violate this provision. It is important to emphasize that it is not the law, but the bill, which is required to originate exclusively in the House of Representatives, because the bill may undergo such extensive changes in the Senate that the result may be a rewriting of the whole. As a result of the Senate action, a distinct bill may be produced. To insist that a revenue statute, not just the bill, must be substantially the same as the House bill would be to deny the Senate’s power not only “to concur with amendments” but also to “propose amendments”. It would violate the coequality of legislative power of the Senate. The Constitution does not prohibit the filing irr the Senate of a substitute bill in anticipation of its receipt of the bill from the House, so long as action by the Senate as a body is withheld pending receipt of the House bill. This was reiterated in the Supreme Court Resolution on the Motion for Reconsideration, October 30, 1995. In *Alvarez v. Guingona*, 252 SCRA 695, R.A. 7720, converting the Municipality of Santiago, Isabela, into an independent, component city, was declared valid, even if it was Senate Bill No. 1243 which was passed by the Senate, because H.B. 8817 was filed in the House of Representatives first. Furthermore, H.B. 8817 was already approved on third reading and duly transmitted to the Senate when the Senate Committee on Local Government conducted its public hearing on S.B. 1243. The filing of a substitute bill in the Senate in anticipation of its receipt of the bill from the House does not contravene the constitutional requirement that a bill of local application should originate in the House of Representatives as long as the Senate does not act thereupon until it receives the House bill.

ii) *Procedure: "No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof 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" [Sec 26 (2) Art. VI].*

iia) In *Arroyo, et al., v. De Venecia, et al.*, G.R. No. 127255, August 14, 1997, the Supreme Court noted that the challenge to the validity of the enactment of R.A. 8240 (amending certain provisions of the National Internal Revenue Code by imposing so-called "sin taxes") was premised on alleged violations of internal rules of procedure of the House of Representatives rather than of constitutional requirements. Decided cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of constitutional requirements or the rights of private individuals. In its Resolution on the Motion for Reconsideration in the same case [June 26, 1998], the Supreme Court ruled that it is well settled that a legislative act will not be declared invalid for non-compliance with the internal rules of the House. In *Osmena v. Pendatun, supra.*, it was held that rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them. Furthermore, parliamentary rules are merely procedural, and with their observance courts have no concern. They may be waived or disregarded by the legislative body.

iib) In *Tolentino v. Secretary of Finance, supra.*, the Supreme Court declared that the Presidential certification dispensed with the requirement not only of printing and distribution but also that of reading the bill on separate days.

iic) It is within the power of the Bicameral Conference Committee to include in its report an entirely new provision that is not found either in the House bill or in the Senate bill. And if the Committee can propose an amendment consisting of one or two provisions, there is no reason why it cannot propose several provisions, collectively considered as "an amendment in the nature of a substitute", so long as the amendment is germane to the subject of the bills before the Committee [*Tolentino v. Secretary of Finance, supra.*]. In the Resolution on the Motion for Reconsideration, October 30, 1995, the Court adverted to its opinion in *Philippine Judges Association v. Prado*, 227 SCRA 703, that the jurisdiction of the Conference Committee is not limited to resolving differences between the Senate and the House versions of the bill. It may propose an entirely new provision.

. iii) *Approval of bills.* The bill becomes a law in any of the following cases:

iiia) When the President approves the same and signs it.

iiib) When Congress overrides the Presidential veto. If the President disapproves the bill, he shall return the same, with his objections thereto contained in his *Veto Message*, to the House of origin [which shall enter the objections at large in its Journal]. The Veto is overridden upon a vote of two-thirds of all members of the House of origin and the other House. [Yea and nays entered in the Journal of each House.]

iiib1) No pocket veto.

iiib2) *Partial veto.* As a rule, a partial veto is invalid. It is allowed only for particular items in an appropriation, revenue or tariff bill [Sec. 27 (2), Art. VI]. See *Bolinao Electronics Corporation v. Valencia*, 11 SCRA 486. See also *Gonzales v. Macaraig*, 191 SCRA 452, on "item veto". In *Bengzon v. Drilon*, 208 SCRA 133, the Supreme Court declared as unconstitutional the veto made by President Aquino of appropriations intended for the adjustment of pensions of retired justices [pursuant to A.M. 91-8-225-CA] under R.A. 910, as amended by R.A. 1797, as this is not an item veto. The President cannot veto part of an item in an appropriation bill while approving the remaining portion of the item. Furthermore, the President cannot set aside a judgment of the Supreme Court; neither can the veto power be exercised as a means of repealing R.A. 1797. The veto also impairs the fiscal autonomy of the Judiciary, and deprives retired justices of the right to a pension vested under R.A. 1797.

iiib3) *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 action. The form may either be negative, i.e., subjecting the executive action to disapproval by Congress, or affirmative, i.e., requiring approval of the executive action by Congress. A congressional veto is subject to serious questions involving the principle of separation of powers. In *Philippine Constitution Association v. Enriquez*, 235 SCRA 506, on the issue of whether Special Provision No. 2 on the "Use of Funds" in the appropriation for the modernization of the AFP, General Appropriations Act of 1994, which requires prior approval of Congress for the release of the corresponding modernization funds, is unconstitutional, the Supreme Court did not resolve the issue of legislative veto, but instead, ruled that any provision blocking an administrative action in implementing a law or requiring legislative approval for executive acts

must be incorporated in a separate and substantive bill. Thus, since Special Provision No. 2 is an “inappropriate” provision, the President properly vetoed the same.

^{iiic)} When the President fails to act upon the bill for thirty riay~~s~~; from receipt thereof, the bill shall become a law as if he had signed it [Sec. 27(1), Art. VI].

iv) *Effectivity of laws* [Art. 2, Civil Code]. See *Tanada v. Tuvera*, *supra.*, and Executive Order No. 200, June 18, 1987.

2. *Power of Appropriation.* In *Philippine Constitution Association v. Enriquez*, *supra.*, on the issue of whether the power given to members of Congress (under the 1994 GM) to propose and identify the projects to be funded by the Countrywide Development Fund was an encroachment by the legislature on executive power, the Supreme Court stated: The spending power, called the “power of the purse”, belongs to Congress, subject only to the veto power of the President. While it is the President who proposes the budget, still, the final say on the matter of appropriation is lodged in Congress. The power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law. It can be as detailed and as broad as Congress wants it to be.

a) *Need for appropriation.* [Sec. 29 (1), Art. VI: “No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”] In *Comelec v. Judge Quijano-Padilla and Photokina Marketing*, G.R. No. 151992, September 18, 2002, the Supreme Court said that the existence of appropriations and the availability of funds are indispensable requisites to, or conditions *sine qua non* for, the execution of government contracts. The import of the constitutional requirement for an appropriation is to require the various agencies to limit their expenditure within the appropriations made by law for each fiscal year. In this case, since the bid of Phokokina (P6.588B) was way beyond the amount appropriated by law (P1B) or funds certified to be available (P1.2B), there is no way the Comelec should enter into the contract. The Bids and Awards Committee of the Comelec should have rejected the bid of Photokina for being excessive.

k) *Appropriation law, defined.* A statute the primary and specific purpose of which is to authorize the release of public funds from the Treasury.

c) Classification:

i) *General appropriation law:* passed annually, intended to provide for the financial operations of the entire government during one fiscal period.

- ii) *Special appropriation law:* designed for a specific purpose.
- d) Implied [extra-constitutional] limitations on appropriation measures:

i) *Appropriation must be devoted to a public purpose.* See *Pascual v. Secretary of Public Works and Communications*, 110 Phil 331.

ii) *The sum authorized to be released must be determinate, or at least determinable.* See *Guingona v. Carague*, 196 SCRA 221, where the Supreme Court upheld the constitutionality of the automatic appropriation for debt service under the 1990 General Appropriations Act. According to the Court, the legislative intent in R.A. 4860, Sec. 31, P.D. 1177, and P.D. 1967, is that the amount needed should be automatically set aside in order to enable the Republic of the Philippines to pay the principal, interest, taxes and other normal banking charges on the loans, credit, indebtedness x x x when they become due without the need to enact a separate law appropriating funds therefor as the need arises, x x x Although the decrees do not state the specific amounts to be paid x x x the amounts nevertheless are made certain by the legislative parameters provided in the decrees x x x The mandate is to pay only the principal, interest, taxes and other normal banking charges x x x when they shall become due. No uncertainty arises in executive implementation as the limit will be the exact amounts as shown by the books in the Treasury.

- e) Constitutional limitations on special appropriation measures:

i) *Must specify the public purpose for which the sum is intended.*

ii) *Must be supported by funds actually available* as certified to by the National Treasurer, or to be raised by a corresponding revenue proposal included therein [Sec. 25(4), Art. VI].

- f) Constitutional mles on general appropriations law [Sec. 25, Art. VI]:

i) *Congress may not increase the appropriations recommended by the President* for the operation of the Government as specified in the budget.

ii) *The form, content, and manner of preparation of the budget shall be prescribed by law.*

iii) *No provision or enactment shall be embraced 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. This is intended to prevent *riders*, or irrelevant provisions included in the bill to ensure its approval. See *Garcia v. Mata*, 65 SCRA 520.

iv) *Procedure for approving appropriations for Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.* This is intended to prevent *sub rosa* appropriation by Congress.

v) *Prohibition against transfer of appropriations.* [Sec. 25 (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 appropriation law for their respective offices from savings in other items of their respective appropriations.”] See *Demetria v. Alba*, 148 SCRA 209, on the unconstitutionality of certain provisions of P.D. 1177.

va) On the constitutionality of a Special Provision in the 1994 GAA which allows a member of Congress to realign his allocation for operation expenses to any other expense category, the Supreme Court, in *Philippine Constitution Association v. Enriquez, supra.*, said that the members of Congress only determine the necessity of the realignment of savings in the allotments for their operational expenses, because they are in the best position to do so, being knowledgeable of the savings available in some items of the operational expenses, and which items need augmentation. However it is the Senate President or the Speaker of the House of Representatives,’ as the case may be, who shall approve the realignment. Hence, the special provision adverted to is not unconstitutional.

vb) In the same case, the Supreme Court upheld the Presidential veto of a provision (in the appropriation for the AFP Pension and Gratuity Fund, 1994 GAA) which authorized the Chief of Staff to use savings to augment the pension fund, on the ground that under Sec. 25 (5), Art VI such right must and can be exercised only by the President of the Philippines

vi) *Prohibition against appropriations for sectarian benefit* [Sec 29(2), Art. VI: *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”]. See *Aglipay v. Ruiz*, 64 SCRA 201; *Garces v Estenzo**

104 SCRA 510. In *Manosca v. Court of Appeals, supra.*, the expropriation of the birthplace of Felix Manalo, founder of Iglesia ni Cristo, was deemed not violative of the provision. The Supreme Court said that the attempt to give some religious perspective to the case deserves little consideration, for what should be significant is the principal objective of, not the casual consequences that might follow from, the exercise of the power. The practical reality that greater benefit may be derived by members of the Iglesia ni Cristo than by most others could well be true, but such peculiar advantage still remains to be merely incidental and secondary in nature.

vii) *Automatic reappropriation [Sec. 25 (7), Art. VI: "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 the preceding fiscal year shall be deemed re-enacted and shall remain in force and effect until the general appropriations bill is passed by the Congress"]..*

g) Impoundment. The refusal by the President for whatever reason to spend funds made available by Congress. It is the failure to spend or obligate budget authority of any type [*Philconsa v. Enriquez, supra.*]. This power of the President is derived from Sec. 38 of the Administrative Code of 1987 on suspension.

i) *Appropriation reserves*. Sec. 37 of the Administrative Code authorizes the Budget Secretary to establish reserves against appropriations to provide for contingencies and emergencies which may arise during the year. This is merely expenditure deferral, not suspension, since the agencies concerned can still draw on the reserves if the fiscal outlook improves.

3. Power of Taxation.

a) Limitations:

i) Rule of taxation shall be uniform and equitable. Congress shall evolve a progressive system of taxation.

ii) 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 [Sec. 28(3), Art. VI]. See *Lladoc v. Commissioner of Internal Revenue, 14 SCRA 292; Province of Abra v. Hernando, 107 SCRA 104.*

iii) 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 [Sec. 4(3), Art. XIV]. See *Abra Valley College v. Aquino*, 162 SCRA 106.

iv) Law granting tax exemption shall be passed only with the concurrence of the majority of all the members of Congress [Sec. 29(4), Art. VI].

4. *Power of Legislative Investigation* [Sec. 21, Art. VI: *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*]. .

a) Sec. 4 (b) of Executive Order No. 1, issued by President Aquino on February 28, 1986, which provides that “no member or staff of the Commission (PCGG) shall be required to testify or produce evidence in any judicial, legislative or administrative proceedings concerning matters within its official cognizance” is repugnant to Sec. 21, Art. VII, of the Constitution, and is deemed repealed. The power of Congress to conduct inquiries in aid of legislation encompasses everything that concerns the administration of existing laws, as well as proposed or possibly needed statutes. It even extends to government agencies created by Congress and officers whose positions are within the power of Congress to regulate or abolish. Certainly, a mere provision of law cannot pose a limitation to the broad power of Congress in the absence of any constitutional basis. Furthermore, Sec. 4 (b) of E.O. No. 1, being in the nature of an immunity, is inconsistent with Art. XI, Sec. 1, of the Constitution which states that “public office is a public trust”, as it goes against the grain of public accountability and places PCGG members and staff beyond the reach of the courts, Congress and other administrative bodies [*Miguel v. Gordon*, G.R. No. 174340, October 17, 2006].

b) Limitations:

i) *In aid of legislation.*

ia) In *Bengzon v. Senate Blue Ribbon Committee*, 203 SCRA 767, the inquiry was held not to be in aid of legislation. The Supreme Court declared that the speech of Senator Enrile contained no suggestion of contemplated legislation; he merely called upon the Senate to look into possible violation of Sec. 5, RA 3019. There appears to be no intended legislation involved. Further, the issue to be investigated is one over which jurisdiction has been acquired by the Sandiganbayan; the issue had thus been preempted by that Court. To allow the Committee to investigate would only pose the

possibility of conflicting judgments, but if the Committee's judgment is reached before the Sandiganbayan's, the possibility that its influence may be made to bear on the ultimate judgment of the Sandiganbayan cannot be discounted. The SBRC's probe and inquiry into the same justiciable controversy would be an encroachment into the exclusive domain of judicial jurisdiction that had much earlier set in.

ib) However, the mere filing of a criminal or an administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative inquiry, otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, cannot be made subordinate to a criminal or an administrative investigation [*Standard Chartered Bank v. Senate Committee on Banks, G.R. No. 167173, December 27, 2007*].

ii) *In accordance with duly published rules of procedure.*

iia) In *Neriv. Senate Committees, G.R. No. 180843, March 25, 2008*, by a majority vote, the Supreme Court declared that the conduct of the investigations by the Senate Committees did not comply with the Constitution, for failure to publish the rules of procedure on legislative inquiries.

iii) *Rights of persons appearing in, or affected by such, inquiry shall be respected.*

iiia) In *Standard Chartered Bank v. Senate Committee on Banks, supra.*, it was held that the legislative inquiry does not violate the petitioners' right to privacy. In *Miguel v. Gordon, supra.*, the Court said that the right of the people to access information on matters of public concern generally prevails over the right to the privacy of ordinary financial transactions. Employing the *rational basis relationship test* laid down in *Morfe v. Mutuc*, the Court said that there is no infringement of the individual's right to privacy as the requirement to disclose information is for a valid purpose; in this case, to ensure that the government agencies involved in regulating banking transactions adequately protect the public who invest in foreign securities.

iiia) Neither does the inquiry violate the petitioners' right against self-incrimination, because the officers of Standard Chartered Bank are not being indicted as accused in a criminal proceeding; they are merely summoned as resource persons, or as witnesses. Likewise, they will not be

subjected to any penalty by reason of their testimony [*Standard Chartered Bank v. Senate Committee on Banks, supra.*].

c) Power to punish contempt. Punishment of contumacious witness may include imprisonment, for the duration of the session. The Senate, being a continuing body, may order imprisonment for an indefinite period, but principles of due process and equal protection will have to be considered. See *Arnault v. Nazareno*, 87 Phil 29; *Arnault v. Balagtas*, 97 Phil 358.

i) In *Miguel v. Gordon, supra.*, the Supreme Court underscored the indispensability and usefulness of the power of contempt in a legislative inquiry. Sec. 21, Art. VI, grants the power of inquiry not only to the Senate and the House of Representatives, but also to their respective committees. Clearly, there is a direct conferral of the power to the committees. A reasonable conclusion is that the conferral of the legislative power of inquiry upon any committee of Congress must carry with it all powers necessary and proper for its effective discharge.

5. *Question hour.* 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. Written questions shall be submitted to the President of the 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, the appearance shall be conducted in executive session. [Sec. 22, Art. VI],

a) A distinction has to be made between the power to conduct inquiries in aid of legislation, the aim of which is to elicit information that may be used for legislation, and the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress' oversight function [*Senate v. Ermita, supra.*] .ⁱ⁾

i) When Congress merely seeks to be informed on how department heads are implementing the statutes which it has issued, its right to such information is not as imperative as that of the President to whom, as Chief Executive, the department heads must give a report of their performance as a matter of duty. In such instances, Art. VI, Sec. 22, in keeping with the doctrine of separation of powers, states that Congress may only request the appearance of department heads, who may appear with

ii) However, when the inquiry in which Congress requires their appearance is “in aid of legislation” under Sec. 21, the appearance is mandatory. When Congress exercises its power of inquiry, the only way for department heads to exempt themselves therefrom is by a valid claim of executive privilege. They are not exempt by the mere fact that they are department heads. Only one executive official may be exempted from this power — the President — on whom executive power is vested, hence, beyond the reach of Congress except through the power of impeachment.

iii) Thus, the requirement for Cabinet Members to secure Presidential consent under Sec. 1 of E.O. 464, which is limited only to appearances in the question hour, is valid on its face. It cannot, however, 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 to appear in such inquiry, unless a valid claim of privilege is subsequently made either by the President herself or by the Executive Secretary, acting for the President. [*Senate v. Ermita, supra.*]

6. *War powers.* By a vote of 2/3 of both Houses in joint session assembled, voting separately, declare the existence of a state of war [Sec. 23(1), Art. VI].

7. *Power to act as Board of Canvassers in election of President* [Sec. 4, Art. VII].

a) In the exercise of this power, Congress may validly delegate the initial determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee, composed of members of the House of Representatives and of the Senate. The creation of the Joint Committee does not constitute grave abuse and cannot be said to have deprived petitioner and the other members of Congress of their congressional prerogatives, because under the very Rules under attack, the decisions and final report of the said Committee shall be subject to the approval of the joint session of Congress, the two Houses voting separately [*Ruy Elias Lopez v. Senate of the Philippines, G.R. No. 163556, June 8, 2004,*]

b) Even after Congress has adjourned its regular session, it may continue to perform this constitutional duty of canvassing the presidential and vice-presidential election results without need of any call for a special session by the President. The joint public session of both Houses of Congress convened by express directive of Sec. 4, Article VII of the Constitution to canvass the votes for and to proclaim the newly-elected President and Vice President has not, and cannot, adjourn *sine die* until it has accomplished its constitutionally mandated tasks. For only when a board of canvassers

has completed its functions is it rendered *functus officio* [*Pimentel v. Joint Committee of Congress*, G.R. No. 163783, June 22, 2004],

8. *Power to call a special election for President and Vice President [Sec. 10, Art. VII].*

9. *Power to judge President's physical fitness to discharge the functions of the Presidency [Sec. 11, Art. VII],*

10. *Power to revoke or extend suspension of the privilege of the writ of habeas corpus or declaration of martial law [Sec. 18, Art. VII].*

11. *Power to concur in Presidential amnesties.* Concurrence of majority of all the members of Congress [Sec. 19, Art. VII],

12. *Power to concur in treaties or international agreements.* Concurrence of at least 2/3 of all the members of the Senate [Sec. 21, Art. VII]. See *Commissioner of Customs v. Eastern Sea Trading*, 3 SCR A 351.

13. *Power to confirm certain appointments/nominations made by the President.*

a) Nomination made by the President in the event of a vacancy in the Office of Vice President, from among the members of Congress, confirmed by a majority vote of all the Members of both Houses of Congress, voting separately [Sec. 9, Art. VII],

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b) Nominations made by the President under Sec. 16, Art. VII, confirmed by Commission on Appointments.

14. *Power of impeachment [Sec. 2, Art. XI].*

15. *Power relative to natural resources [Sec. 2, Art. XII].*

16. *Power to propose amendments to the Constitution [Secs. 1 and 2, Art XVII].*

IX. THE EXECUTIVE DEPARTMENT

A. The President

1. *Qualifications: "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"* [Sec. 2, Art. VII].

2. *Election [Sec. 4, Art. VII].*

a) Regular Election: Second Monday of May.

b) Congress as canvassing board. 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 Congress, directed to the Senate President who, upon receipt of the certificates of canvass, shall, not later than 30 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. Congress shall promulgate its rules for the canvassing of the certificates. In case two or more candidates shall have an equal and highest number of votes, one of them shall be chosen by a majority vote of all the members of Congress.

i) Sec. 18.5 of R.A. 9189 (Overseas Absentee Voting Act of 2003), insofar as it grants sweeping authority to the Comelec to proclaim all winning candidates, is unconstitutional as it is repugnant to Sec. 4, Art. VII of the Constitution vesting in Congress the authority to proclaim the winning candidates for the positions of President and Vice-President [*Makalintal v. Comelec*, G.R. No. 157013, July 10, 2003].

ii) In the exercise of this power, Congress may validly delegate the initial determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee, composed of members of the House of Representatives and of the Senate. The creation of the Joint Committee does not constitute grave abuse and cannot be said to have deprived petitioner and the other members of Congress of their congressional prerogatives, because under the very Rules under attack, 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 [*Ruy Elias Lopez v. Senate of the Philippines*, G.R. No. 163556, June 8, 2004]

iii) Even after Congress has adjourned its regular session, it may continue to perform this constitutional duty of canvassing the presidential and vice-presidential election results without need of any call for a special session by the President. The joint public session of both Houses of Congress convened by express directive of Sec. 4, Art. VII of the Constitution to canvass the votes for and to proclaim the newly-elected President and Vice-President has not, and cannot, adjourn *sine die* until it has accomplished its constitutionally mandated tasks. For only when a board of canvassers has completed its functions is it rendered *functus officio* [*Aquilino Pimentel, Jr. v. Joint Committee of Congress to Canvass the votes cast for President and Vice President, G.R. No. 163783 June 22, 2004*],

iv) There is no constitutional or statutory basis for Comelec to undertake a separate and an “unofficial” tabulation of, results, whether manually or electronically. By conducting such “unofficial” tabulation, the Comelec descends to the level of a private organization, spending public funds for the purpose. This not only violates the exclusive prerogative of NAMFREL to conduct an “unofficial” count, but also taints the integrity of the envelopes containing the election returns and the election returns themselves. Thus, if the 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 [*Brillantes v. Comelec, G.R. No. 163193, June 15, 2004*].

c) Supreme Court as 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.

3. Term of Office: six [6] years.

a) No re-election: and 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.

b) The six-year term of the incumbent President and Vice President elected in the February 7, 1986 election is, for purposes of synchronization of elections, extended to noon of June 30, 1992 [Sec. 5, Art. XVIII]. See *Osmena v. Comelec, 199 SCRA 750*.

4. Oath of Office [Sec. 5, Art. VII], -

5. Privileges [Sec. 6, Art. VII],

a) Official residence.

b) Salary. Determined by law; shall not be decreased during tenure. No increase shall take effect until after the expiration of the term of the incumbent during which such increase was approved.

c) Immunity from suit. In *Soliven v. Makasiar*, 167 SCRA 393, it was held that while the President is immune from suit, she may not be prevented from instituting suit. See also *In Re: Bermudez*, 145 SCRA 160. In *Forbes v. Chuoco Tiaco*, 16 Phil 534, the Supreme Court said that the President is immune from civil liability.

i) After his tenure, the Chief Executive cannot invoke immunity from suit for civil damages arising out of acts done by him while he was President which were not performed in the exercise of official duties [*Estrada v. Desierto*, G.R. Nos. 146710-15, March 02, 2001].

ii) Even if the DECS Secretary is an alter ego of the President, he cannot invoke the President's immunity from suit in a case filed against him because the questioned acts are not the acts of the President but merely those of a department Secretary [*Gloria v. Court of Appeals*, G.R. No. 119903, August 15, 2000].

d) Executive Privilege. It has been defined as "the right of the President and high-level executive branch officials to withhold information from Congress, the courts, and ultimately, the public". Thus, presidential conversations, correspondences, or discussions during closed-door Cabinet meetings, like the internal deliberations of the Supreme Court and other collegiate courts, or executive sessions of either House of Congress, are recognized as confidential. This kind of information cannot be pried open by a co-equal branch of government [*Senate v. Ermita*, G.R. No. 169777, April 20, 2008]. The claim of executive privilege is highly recognized in cases where the subject of the inquiry relates to a power textually committed by the Constitution to the President, such as in the area of military and foreign relations. Under our Constitution, the President is the repository of the commander-in-chief, appointing, pardoning and diplomatic powers. Consistent with the doctrine of separation of powers, the information relating to these powers may enjoy greater confidentiality than others [*Neri v. Senate Committees*, G.R. No. 180843, March 25, 2008],ⁱ⁾

i) However, the privilege being, by definition, an exemption from the obligation to disclose information (in this case to Congress), the necessity for withholding the information must be of such a high degree as

the public interest in enforcing that obligation in a particular case. In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the President (and to the Executive Secretary, by order of the President) the power to invoke the privilege [*Senate v. Ermita, supra.*].

ii) In *Neri*, a majority of the members of the Supreme Court upheld the refusal of the petitioner to answer the three questions asked during the Senate inquiry because the information sought by the three questions are properly covered by the presidential communications privilege, and executive privilege was validly claimed by the President, through the Executive Secretary. *First*, the communications relate to a “quintessential and non-delegable power” (the power to enter into an executive agreement with other countries) of the President; *second*, the communications were received by a close advisor of the President, Secretary Neri being a member of the Cabinet and by virtue of the “proximity test”, he is covered by executive privilege; and *third*, there was no adequate showing by the respondents of the compelling need for the information as to justify the limitation of the privilege, nor was there a showing of the unavailability of the information elsewhere by an appropriate investigating authority.

6. *Prohibitions/Inhibitions [Secs. 6 & 13, Art. VII].* Paragraphs (a) to (d) apply to the Vice President; paragraphs (b) to (d) also apply to Members of the Cabinet, their deputies or assistants. During tenure:

a) Shall not receive any other emoluments from the government or any other source.

i) In *Republic v. Sandiganbayan, G.R. No. 152154, July 15, 2003*, the Court noted that the total accumulated salaries of the Marcos couple amounted to P2,319,583.33 which, when converted to dollars at the exchange rate then prevailing would have an equivalent value of \$304,372.43. This sum should be held as the only known lawful income of the respondents Marcos since they did not file any Statement of Assets and Liabilities, as required by law, from which their net worth could be determined. Besides, under the 1935 Constitution, Ferdinand Marcos, as President, could not receive “any other emolument from the Government or any of its subdivisions and instrumentalities”, and under the 1973 Constitution, could not “receive during his tenure any other emolument from the Government or any other source”. In fact, his management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution.

b) Unless otherwise provided in this Constitution, shall not hold any other office or employment.

i) Note, however that the Vice President 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.

ii) In *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, the Supreme Court declared as unconstitutional Executive Order No. 284 which allowed Cabinet members to hold two other offices in government, in direct contravention of Sec. 13, Art. VII. The prohibition on the President and his official family is all-embracing and covers both public and private office employment, not being qualified by the phrase "in the Government" x x x This is proof of the intent of the Constitution to treat them as a class by itself and to impose upon said class stricter prohibitions.

iii) This prohibition must not, however, 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 officials' office. The reason is that these 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* Chairman of the Board of the Philippine Ports Authority and the Light Rail Transit 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. CO A*, G.R. No. 156982, September 8, 2004].

iv) The Secretary of Labor, who sits in an *ex officio* capacity as member of the Board of Directors of the Philippine Export Processing Zone (PEZA), is prohibited from receiving any compensation for this additional office, because his services are already paid for and covered by the compensation attached to his principal office. It follows that the petitioner, who sits in the PEZA Board merely as representative of the Secretary of Labor, is likewise prohibited from receiving any compensation therefor. Otherwise, the representative would have a better right than his principal, and the fact that the petitioner's position as Director IV of the Department of Labor and Employment (DOLE) is not covered by the ruling in the *Civil Liberties Union* case is of no moment. After all, the petitioner attended the PEZA Board meetings by authority given to him by the Secretary of Labor; without such designation or authority, petitioner would not have been in the Board at all [*Bitonio v. Commission on Audit*, G.R. No. 147392, March 12, 2004].

c) 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.

d) Strictly avoid conflict of interest in the conduct of their office.

e) May not appoint spouse or relatives by consanguinity or affinity within the fourth civil degree as Members 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.

, 7. *Rules on Succession.*

a) Vacancy at the beginning of the term.

i) Death or permanent disability of the President-elect: Vice President-elect shall become President.

ii) President-elect fails to qualify: Vice President-elect shall act as President until the President-elect shall have qualified.

iii) President shall not have been chosen: Vice President-elect shall act as President until a President shall have been chosen and qualified.

iv) No President and Vice President chosen nor shall have qualified, or 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. In the event of inability of the officials mentioned, 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.

b) Vacancy during the term:

i) Death, permanent disability, removal from office, or resignation of the President: Vice President shall become the President.

ia) In *Joseph Ejercito Estrada v. Gloria Macapagal-Arroyo*, G. R. No. 146738, March 2, 2001, the Supreme Court declared that the resignation of President Estrada could not be doubted as confirmed by his

leaving Malacanang. In the press release containing his final statement, [i] he acknowledged the oath-taking of the respondent as President; [ii] he emphasized he was leaving the palace for the sake of peace and in order to begin the healing process (he did not say that he was leaving due to any kind of disability and that he was going to reassume the Presidency as soon as the disability disappears); [iii] he expressed his gratitude to the people for the opportunity to serve them as President (without doubt referring to the past opportunity); [iv] he assured that he will not shirk from any future challenge that may come in the same service of the country; and [v] he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. The Court 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.

ii) Death, permanent disability, removal from office, or resignation of President and Vice President: Senate President or, in case of his inability, the Speaker of the House of Representatives, shall act as President until a President or Vice President shall be elected and qualified. Congress, by law, shall provide for the manner in which one is to act as President in the event of inability of the officials mentioned above.

c) Temporary Disability.

i) When President transmits to the Senate President and the Speaker of the House 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.

ii) When a majority of all the Members of the Cabinet transmit to the Senate President and the Speaker 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, x x x Thereafter, when the President transmits to the Senate President and Speaker his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of the Members of the Cabinet transmit within 5 days to the Senate President and Speaker their written declaration that the President is unable to discharge the powers and duties of his office, Congress shall decide the issue. For this purpose, Congress shall convene, if not in session, within 48 hours. And if, within 10 days from receipt of the last written declaration or, if not in session, within 12 days after it is required to assemble, Congress determines by a 2/3 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.

d) Constitutional duty of Congress in case of vacancy in the offices of President and Vice President: At 10 o'clock in the morning of the 3rd day after the vacancy occurs, Congress shall convene without need of a call, and within 7 days enact a law calling for a special election to elect a President and a Vice President to be held not earlier than 45 nor later than 60 days from the time of such call. The bill shall be deemed certified and shall become law upon its approval on third reading by Congress, x x x The convening of Congress cannot be suspended nor the special election postponed, x x x No special election shall be called if the vacancy occurs within 18 months before the date of the next presidential election.

8. *Removal of the President.* By impeachment [Secs. 2 & 3, Art. XI].

B. ***The Vice President.***

1. *Qualifications, election, term of office and removal.* The same as the President [Sec. 3, Art. VII], but no Vice President shall serve for more than 2 successive terms. The Vice President may be appointed as Member of the Cabinet. Such appointment requires no confirmation by the Commission on Appointments.

2. *Vacancy in the office of the Vice President [Sec. 9, Art. VII]:* 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 Congress voting separately.

C. ***Powers of the President***

1. *The Executive Power [Secs. 1, Art. VII]: "The executive power shall be vested in the President of the Philippines". Sec. 17, Art. VII: "x x x He shall ensure that the laws be faithfully executed.]*

a) The executive power is the power to enforce and administer the laws. In *National Electrification Administration v. Court of Appeals*, G.R. No. 143481, February 15, 2002, the Supreme Court said that as the administrative head of the government, the President is vested with the power to execute, administer and carry out laws into practical operation. Executive power, then, is the power of carrying out the laws into practical operation and enforcing their due observance.

b) *Authority to reorganize the Office of the President.* The Administrative Code of 1987 (EO 292) expressly grants the President continuing authority to reorganize the Office of the President. The law grants the President this power in recognition of the recurring need of every President to reorganize his office “to achieve simplicity, economy and efficiency”. The Office of the President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. But the power to reorganize the Office of the President under Sec. 31 (2) and (3) of the Administrative Code should be distinguished from his power to reorganize the Office of the President Proper. Under Sec. 31 (1) of EO 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Sec. 31 (2) and (3), the President's power to reorganize offices outside the Office of the President Proper is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and vice versa [*Domingo v. Zamora*, G.R. No. 142283, February 6, 2003].

c) In *Villena v. Secretary of the Interior*, 67 Phil 451, and in *Planas v. Gil*, 67 Phil 62, the Supreme Court declared that the President of the Philippines is the Executive of the Government of the Philippines and no other, and that all executive authority is thus vested in him. [This is in keeping with the rule announced in *Myers v. United States*, 272 U.S. 52, that the specific grant of executive powers is not inclusive but is merely a limitation upon the general grant of executive power.] However, in *Lacson v. Roque*, 92 Phil 456, and in *Mondano v. Silvosa*, 97 Phil 143, the Supreme Court opted for a stricter interpretation of executive power, e.g., the President's power of general supervision over local governments could be exercised by him only as may be provided by law. See *Marcos v. Manglapus*, 177 SCRA 668, on certain “residual powers” of the President of the Philippines.

d) In *Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo*, G.R. No. 160093, July 31, 2007, it was held that the President has the authority to carry out a reorganization of the Department of Health under the Constitution and statutes. This authority is an adjunct of the President's power of control under Art. VII, Secs. 1 and 17, and it is also an exercise of his “residual powers”. However, the President must exercise good faith in carrying out the reorganization of any branch or agency of the executive department.

e) It is not for the President to determine the validity of a law since this is a question addressed to the judiciary. Thus, 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 to negate the will of the legislature and to encroach upon the prerogatives of the Judiciary.

2. *The Power of Appointment [Sec. 16, Art. VII: "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."].*

a) Appointment is the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office. 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) Appointments, classified.

i) *Permanent or temporary.* Permanent appointments are those extended to persons possessing the qualifications and the requisite eligibility and are thus protected by the constitutional guarantee of security of tenure. Temporary appointments are given to persons without such eligibility, revocable at will and without the necessity of just cause or a valid investigation; 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.

ia) 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, 8 SCRA 692*].

ib) In *Binamira v. Garrucho, 188 SCRA 154*, it was held that where a person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced

at will by the appointing authority. In this sense, a designation is considered only an acting or temporary appointment which does not confer security of tenure on the person named.

ii) *Regular or ad interim.* 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. 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 from prolonged vacancies in government offices.

iia) An *ad interim* appointment is a permanent appointment [*Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, 140 SCRA 22]. It is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has 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*, G.R. No. 149036, April 2, 2002].

iib) An *ad interim* appointment can be terminated for two causes specified in the Constitution: disapproval of the appointment by the Commission on Appointments, or adjournment by Congress without the Commission on Appointments acting on the appointment. 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 disapproval 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 the 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*, *supra*].

c) Officials who are to be appointed by the President.

i) The first sentence of Sec. 16, Art. VII, says that the President shall nominate, and with the consent of the Commission on Appointments, appoint the following: {a} Heads of executive departments; [b] Ambassadors,

other public ministers and consuls; [c] Officers of the armed forces from the rank of colonel or naval captain; and [d] Those other officers whose appointments are vested in him in the Constitution.

ia) In *Sarmiento v. Mison*, 156 SCRA 549, the Supreme Court declared that the foregoing are the only categories of appointments which require confirmation by the Commission on Elections. In this case, it was held that the appointment of Salvador Mison as Commissioner of Customs needs no confirmation by the Commission on Appointments, because the Commissioner of the Customs is not among the officers mentioned in the first sentence, Sec. 16, Art. VII. On the other hand, in *Quintos-Deles v. Committee on Constitutional Commissions, Commission on Appointments*, 177 SCRA 259, the appointment of a sectoral representative by the President of the Philippines is specifically provided for in Sec. 7, Art. XVIII of the Constitution. Thus, the appointment of a sectoral representative falls under category [d] above.

ib) In *Soriano v. Lista*, G.R. No. 153881, March 24, 2003, the Supreme Court said that because the Philippine Coast Guard (PCG) is no longer part of the Philippine Navy or the Armed Forces of the Philippines, but is now under the Department of Transportation and Communications (DOTC), a civilian agency, the promotion and appointment of respondent officers of the PCG will not require confirmation by the Commission on Appointments. Obviously, the clause "officers of the armed forces from the rank of colonel or naval captain" refers to military officers alone.

ii) The second sentence of Sec. 16, VII, states that he shall also appoint [a] All other officers of the Government whose appointments are not otherwise provided by law; and [b] Those whom he may be authorized by law to appoint.

iia) In *Mary Concepcion Bautista v. Salonga*, 172 SCRA 16, the Supreme Court held that the appointment of the Chairman of the Commission on Human Rights is not otherwise 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. In *Calderon v. Carale*, 208 SCRA 254, Article 215 of the Labor Code, as amended by R.A. 6715, insofar as it requires confirmation by the Commission on Appointments of the appointment of the NLRC Chairman and commissioners, is unconstitutional, because it violates Sec. 16, Art. VII. Infact, in *Manalov. Sistoza*, G.R. No. 107369, August 11, 1999, the Supreme Court said that Congress cannot, by law, require the confirmation of appointments of government officials other than those enumerated in the first sentence of Sec. 16, Art. VII.

iib) In *Tarrosa v. Singson, supra.*, the Court denied the petition for prohibition filed by the petitioner as a “taxpayer” questioning the appointment of Gabriel Singson as Governor of the Bangko Sentral ng Pilipinas for not having been confirmed by the Commission on Appointments as provided in RA 7653, calling attention to its ruling in *Calderon v. Carale*. The petition was dismissed, however, primarily on the ground that it was in the nature of a quo warranto proceeding, which can be commenced only by the Solicitor General or by “a person claiming to be entitled to a public office or position unlawfully held or exercised by another”.

iic) In *Rufino v. Endriga, G.R. No. 113956, July 21, 2006*, the Supreme Court declared that a statute cannot circumvent the constitutional provisions on the power of appointment by filling vacancies in a public office through election by the co-workers in that office. This manner of filling vacancies in public office has no constitutional basis. Thus, because the challenged section of the law is unconstitutional, it is the President who shall appoint the trustees, by virtue of Sec. 16, Art. VII of the Constitution which provides that the President has the power to appoint officers whose appointments are not otherwise provided by law.

d) Steps in the appointing process:

- i) Nomination by the President;
- ii) Confirmation by the Commission on Appointments;
- iii) Issuance of the commission;
- iv) Acceptance by the appointee.

In *Lacson v. Romero, 84 Phil 740*, the Supreme Court declared that an appointment is deemed complete only upon its acceptance. Pending such acceptance, which is optional to the appointee, the appointment may still be validly withdrawn. Appointment to a public office cannot be forced upon any citizen except for purposes of defense of the State under Sec. 4, Art. II, as an exception to the rule against involuntary servitude.

e) Discretion of Appointing Authority. 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. See *Luego v. Civil Service Commission, 143 SCRA 327; Lapinid v. Civil Service Commission, 197 SCRA 106; Pobre v. Mendieta, 224 SCRA 738*.

i) In *Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005, several Senators, including members of the Commission on Appointments, questioned the constitutionality of the appointments issued by the President to respondents as Acting Secretaries of their respective departments, and to prohibit them from performing the duties of Department Secretaries. In denying the petition, the Supreme Court said that 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 a 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. 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 readily 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.

f) Special Constitutional Limitations on the President's appointing power:

i) The President may not appoint his spouse and relatives by consanguinity or affinity within the fourth civil degree as Members of the Constitutional Commissions, as Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or -controlled corporations [Sec. 13, Art. VII].

ii) Appointments extended by an acting President shall remain effective unless revoked by the elected President within ninety days from his assumption of office [Sec. 14, Art. VII].

iii) 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 [Sec. 15, Art. VII].

iiia) In *De Rama v. Court of Appeals*, G.R. No. 131136, February 28, 2001, the Supreme Court ruled that this 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.

iiib) During this period, the President is neither required to make appointments to the courts nor allowed to do so. Secs. 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 time frames provided therein, unless prohibited by Sec. 15 of Article VII. While the filling 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: Mateo Valenzuela, A.M. No. 98-5-01-SC, November 9, 1998*].

[Note: The presidential power of appointment may also be limited by Congress through its power to prescribe qualifications for public office; and the judiciary may annul an appointment made by the President if the appointee is not qualified or has not been validly confirmed.]

g) The Power of Removal. As a general rule, the power of removal may be implied from the power of appointment. 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 accordance with the prescribed administrative procedure.

i) Members of the career service of the Civil Service who are appointed by the President may be directly disciplined by him [*Villaluz v. Zaldivar, 15 SCRA 710*], provided that the same is for cause and in accordance with the procedure prescribed by law.

ii) Members of the Cabinet and such officers whose continuity in office depends upon the pleasure of the President may be replaced at any time, but legally speaking, their separation is effected not by removal but by expiration of their term. See *Alajar v. Alba, 100 Phil 683; Aparri v. Court of Appeals, 127 SCRA 231*.

3. *The Power of Control [Sec. 17, Art. VII: "The President shall have control of all the executive departments, bureaus, and offices, x x x"]*.

a) 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 [*Mondano v. Silvosa, supra*]. It is distinguished from supervision in that the latter means overseeing, or the power or authority of an officer to see that subordinate

officers perform their duties, and 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.

i) The President has the authority to carry out a reorganization of the Department of Health under the Constitution and statutes. This authority is an adjunct of his power of control under Art. VII, Sections 1 and 17, of the Constitution. While the power to abolish an office is generally lodged in the legislature, the authority of the President to reorganize the executive branch, which may incidentally include such abolition, is permissible under present laws [*Malaria Employees and Workers Association of the Philippines (MEWAP) v. Romulo, G.R. No. 160093, July 31, 2007*].

ii) The President's power to reorganize the executive branch is also an exercise of his *residual powers* under Section 20, Title I, Book II, Executive Order No. 292 (Administrative Code of the Philippines), which grants the President broad organization powers to implement reorganization measures. Further, Presidential Decree No. 1772, which amended P.D. 1416, grants the President the continuing authority to reorganize the national government which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities, and to standardize salaries and materials [*MEWAP v. Romulo, supra*].

iii) Be that as it may, the President must exercise good faith in carrying out the reorganization of any branch or agency of the executive department if it is for the purpose of economy or to make bureaucracy more efficient. R.A. 6656 enumerates the circumstances which may be considered as evidence of bad faith in the removal of civil service employees as a result of reorganization: (a) where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; (b) where an office is abolished and another performing substantially the same functions is created; (c) where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit; (d) where there is a classification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices; and (e) where the removal violates the order of separation [*MEWAP v. Romulo, supra*].

b) The alter ego principle. Also known as the "*doctrine of qualified political agency*". Under this doctrine which recognizes the establishment of a single executive, all executives 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 [*DENR v. DENR Region XII Employees. G.R. No. 149724, August 19, 2003*].

i) The President may exercise powers conferred by law upon Cabinet members or other subordinate executive officers [*City of Iligan v. Director of Lands, 158 SCRA 158; Araneta v. Gatmaitan, 101 Phil 328*], Even where the law provides that the decision of the Director of Lands on questions of fact shall be conclusive when affirmed by the Secretary of Agriculture and Natural Resources, the same may, on appeal to the President, be reviewed and reversed by the Executive Secretary [*Lacson-Magallanes v. Pano, 21 SCRA 895*]. Thus, in *Gascon v. Arroyo, 178 SCRA 582*, it was held that the Executive Secretary had the authority to enter into the "Agreement to Arbitrate" with ABS-CBN, since he was acting on behalf of the President who had the power to negotiate such agreement.

ii) Applying this doctrine, the power of the President to reorganize the National Government may validly be delegated to his Cabinet Members exercising control over a particular executive department. Accordingly, in this case, the DENR Secretary can validly reorganize the DENR by ordering the transfer of the DENR XII Regional Offices from Cotabato City to Koronadal, South Cotabato. The exercise of this authority by the DENR Secretary, as an alter ego of the President, is presumed to be the act of the President because the latter had not expressly repudiated the same [*DENR v. DENR Region XII Employees, supra.*].

iii) But even if he is an alter-ego of the President, the DECS Secretary cannot invoke the President's immunity from suit in a case filed against him, inasmuch as the questioned acts are not those of the President [*Gloria v. Court of Appeals, G.R. No. 119903, August 15, 2000*].

c) Appeal to the President from decisions of subordinate executive officers, including Cabinet members, completes exhaustion of administrative remedies [*Tan v. Director of Forestry, 125 SCRA 302*], except in the instances when the *doctrine of qualified political agency* applies, in which case the decision of the Cabinet Secretary carries the presumptive approval of the

President, and there is no need to appeal the decision to the President in order to complete exhaustion of administrative remedies [*Kilusang Bayan, etc., v. Dominguez, 205 SCRA 92*],

d) But the power of control may be exercised by the President only over the acts, not over the actor [*Angangco v. Castillo, 9 SCRA 619*].

e) The Subic Bay Metropolitan Authority (SBMA) is under the control of the Office of the President. All projects undertaken by SBMA involving P2- million or above require the approval of the President of the Philippines under LOI 620 [*Hutchinson Ports Phils, Ltd. V. SBMA, G.R. No. 131367, August 31, 2000*]

f) Power of control of Justice Secretary over prosecutors. In *Ledesma v. Court of Appeals, supra.*, it was reiterated that decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who exercises the power of direct control and supervision over prosecutors. Review, as an act of supervision and control by the Justice Secretary, finds basis in the doctrine of exhaustion of administrative remedies. This power may still be availed of despite the filing of a criminal information in Court, and in his discretion, the Secretary may affirm, modify or reverse the resolutions of his subordinates. The *Crespo* ruling did not foreclose the Justice Secretary's power of review. Thus, where the Secretary of Justice exercises his power of review only after an information is filed, trial courts should defer or suspend arraignment and other proceedings until the appeal is resolved. Such deferment, however, does not mean that the trial court is *ipso facto* bound by the resolution of the Secretary of Justice, because jurisdiction, once acquired by the trial court, is not lost despite the resolution of the Secretary of Justice to withdraw the information or to dismiss the case. See also *Solar Team Entertainment v. Judge How, G.R. No. 140863, August 22, 2000; Noblejas v. Salas, 67 SCRA 47; Villegas v. Enrile, 50 SCRA 11; David v. Villegas, 81 SCRA 842*.

g) *The President exercises only the power of general supervision over local governments [Sec. 4, Art. X],*ⁱ⁾

i) On the President's power of general supervision, however, the President can only interfere in the affairs and activities of a local government unit if he or she finds that the latter had acted contrary to law. The President or any of his alter egos, cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive, therefore, by the President or any of his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity,

autonomy, as well as the doctrine of separation of powers of the executive and the legislative departments in governing municipal corporations [*Judge Dadole v. Commission on Audit, G.R. No. 125350. December 3, 2002*].

ii) Sec. 187, R.A. 7160, which authorizes the Secretary of Justice to review the constitutionality or 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, 235 SCRA 135*],

iii) In *Pimentel v. Aguirre, G.R. No. 132988, July 19, 2000*, the Supreme Court held that Sec. 4, Administrative Order No. 327, which withholds 5% of the Internal Revenue Allotment (IRA) of local government units, is unconstitutional, because the President's power over local governments is only one of general supervision, and not one of control. A basic feature of local fiscal autonomy is the automatic release of LGU shares in the national internal revenue. This is mandated by no less than the Constitution.

4. *The Military Powers [Sec. 18, Art. VII: "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 cases 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. x x x"]*

a) The Commander-in-Chief clause.

i) "*The President shall be the Commander-in-Chief of all armed forces of the Philippines...*" In *Gudaniv. Senga, G.R. No. 170165, August 15, 2006*, the Senate Committee on National Defense invited several senior AFP officers to testify on matters related to the conduct of the 2004 elections. AFP Chief of Staff General Senga wrote Senator Biazon, chairman of the Senate Committee, that "no approval has been granted by the President to any AFP officer to appear" at the Senate hearing. This notwithstanding, General Gudani and Col. Balutan attended and both testified at the hearing. On recommendation of the Office of the Provost Marshal General, Gen. Gudani and Col. Balutan were charged with violation of Articles of War 65, on will fully disobeying a superior officer, in relation to Articles of War 97, on conduct prejudicial to good order and military discipline. Gudani and Balutan filed a petition for certiorari and prohibition, asking that the order of PGMA preventing petitioners from testifying be declared unconstitutional, the charges for violation of the

Articles of War be quashed, and the respondents be permanently enjoined from proceeding against the petitioners. The Supreme Court dismissed the petition.

ia) The ability of the President to require a military official to secure prior consent before appearing in Congress pertains to a wholly different and independent specie of presidential authority — the Commander-in-Chief powers of the President. By tradition and jurisprudence, these commander-in-chief powers are not encumbered by the same degree of restriction as that which may attach to executive privilege or executive control.

ib) The vitality, of the tenet that the President is the commander-in-chief of the AFP is most crucial to the democratic way of life, to civil supremacy over the military, and to the general stability of our representative system of government. The Court quoted *Kapunan v. De Villa*: “The Court is of the view that such is justified by the requirements of military discipline. It cannot be gainsaid that certain liberties of persons in the military service, including the freedom of speech, may be circumscribed by rules of military discipline. Thus, to a certain degree, individual rights may be curtailed, because the effectiveness of the military in fulfilling its duties under the law depends to a large extent on the maintenance of discipline within its ranks. Hence, lawful orders must be followed without question and rules must be faithfully complied with, irrespective of a soldier’s personal view on the matter.”

ii) *To call out (such) armed forces to prevent or suppress lawless violence, invasion or rebellion.*

iia) In *David v. Macapagal-Arroyo*, *supra*., the Supreme Court said that the petitioners failed to prove that President Arroyo’s exercise of the calling-out power, by issuing Presidential Proclamation No. 1017, is totally bereft of factual basis. The Court noted the Solicitor General’s Consolidated Comment and Memorandum showing a detailed narration of the events leading to the issuance of PP 1017, with supporting reports forming part of the record. Thus, absent any contrary allegations, the Court is convinced that the President was justified in issuing PP 1017, calling for military aid. Indeed, judging from the seriousness of the incidents, President Arroyo was not expected to simply fold her arms and do nothing to prevent or suppress what she believed was lawless violence, invasion or rebellion.

iia1) Under the calling-out power, the President may summon the armed forces to aid her in suppressing lawless violence, invasion or rebellion; this involves ordinary police action. But every act that goes beyond the President’s calling-out power is considered illegal or *ultra vires*. For this

reason, a President must be careful in the exercise of her powers. She cannot invoke a greater power when she wishes to act under a lesser power.

iia2) General Order No. 5, issued to implement PP 1017, is valid. It is an order issued by the President, acting as commander-in-chief, addressed to subalterns in the AFP to carry out the provisions of PP 1017. Significantly, it provides a valid standard — that the military and the police should take only the “necessary and appropriate actions and measures to suppress and prevent acts of lawless violence”. But the words “acts of terrorism” found in the GO, had not been legally defined and made punishable by Congress, and thus, should be deemed deleted from the GO.

iia3) However, PP 1017 is unconstitutional insofar as it grants the President the authority to promulgate “decrees”, because legislative power is peculiarly within the province of Congress. Likewise, the inclusion in PP 1017 of Sec. 17, Art. XII of the Constitution is an encroachment on the legislature’s emergency powers. Sec. 17, Art. XII, must be understood as an aspect of the emergency powers clause, and thus, requires a delegation from Congress.

iib) In *Guanzort v. de Villa*, 181 SCRA 623, the Supreme Court recognized, as part of the military powers of the President, the conduct of “saturation drives” or “areal target zoning” by members of the Armed Forces of the Philippines.

iic) In *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, the Supreme Court said that when the President calls out the armed forces to suppress lawless violence, rebellion or invasion, he necessarily exercises a discretionary power solely vested in his wisdom. The Court cannot overrule the President’s discretion or substitute its own. The only criterion is that “whenever it becomes necessary”, the President may call out the armed forces. In the exercise of the power, on-the-spot decisions may be necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the armed forces must be done swiftly and decisively if it were to have any effect at all.

iid) In *Lacson v. Perez*, G.R. No. 147780. May 10, 2001, the Supreme Court said that the President has discretionary authority to declare a “state of rebellion”. The Court may only look into the sufficiency of the factual basis for the exercise of the power.

iie) In *Sanlakas v. Reyes*, *supra*., it was held that the President’s authority to declare a “state of rebellion” springs in the main from

her powers as chief executive and, at the same time, draws strength from her Commander-in-Chief powers. However, a mere declaration of a state of rebellion cannot diminish or violate constitutionally protected rights. There is also no basis for the apprehensions that, because of the declaration, military and police authorities may resort to warrantless arrests. As held in *Lacson v. Perez, supra.*, the authorities may only resort to warrantless arrests of persons suspected of rebellion as provided under Sec. 5, Rule 113 of the Rules of Court. Be that as it may, the Court said that, in calling out the armed forces, a declaration of a state of rebellion is an "utter superfluity". At most, it only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it. "The Court finds that such a declaration is devoid of any legal significance. For all legal intents, the declaration is deemed not written."

iie1) It is pertinent to state that there is a distinction between the President's authority to declare a state of rebellion (in *Sanlakas*) and the authority to proclaim a state of national emergency. While the authority to declare a state of rebellion emanates from her powers as Chief Executive (the statutory authority being Sec. 4, Chapter 2, Book II, Administrative Code of 1997), and the declaration was deemed harmless and without legal significance, in declaring a state of national emergency in PP1017, President Arroyo did not only rely on Sec. 18, Art. VII of the Constitution, but also on Sec. 17, Art. XII of the Constitution, calling for the exercise of awesome powers which cannot be deemed as harmless or without legal significance [*David v. Macapagal-Arroyo, supra.*].

iii) *The power to organize courts martial for the discipline of the members of the armed forces, create military commissions for the punishment of war criminals.* See *Ruffy v. Chief of Staff*, 75 Phil 875; *Kuroda v. Jalandoni* 42 O.G.4282.

iiia) But see *Olaguer v. Military Commission No. 34*, 150 SCRA 144, where it was held that military tribunals cannot try civilians when civil courts are open and functioning. In *Quilona v. General Court Martial*, 206 SCRA 821, the Supreme Court held that pursuant to R.A. 6975, members of the Philippine National Police are not within the jurisdiction of a military court.

iiib) This is made clear in *Navales v. General Abaya, G.R. No. 162318. October 25, 2004*, where the Supreme Court said that in enacting R.A. 7055, the lawmakers merely intended to return to the civilian courts jurisdiction over those offenses that have been traditionally within their jurisdiction, but did not divest the military courts jurisdiction over cases mandated by the Articles of War. Thus, the RTC cannot divest the General Court Martial of jurisdiction over those charged with violations of Art. 63 (Disrespect Toward the President,

etc.), 64 (Disrespect Toward Superior Officer), 67 (Mutiny or Sedition), 96 (Conduct Unbecoming an Officer and a Gentleman) and 97 (General Articles) of the Articles of War, as these are specifically included as "service-connected offenses or crimes" under Sec. 1, R.A. 7055.

iiic) In *Gudani v. Senga*, *supra*., on the issue of whether the court martial could still assume jurisdiction over General Gudani who had been compulsorily retired from the service, the Court quoted from *Abadilla v. Ramos*, where it was held that an officer whose name was dropped from the roll of officers cannot be considered to be outside the jurisdiction of military authorities when military justice proceedings were initiated against him before the termination of his service. Once jurisdiction has been acquired over the officer, it continues until his case is terminated.

b) Suspension of the privilege of the writ of habeas corpus.

- i) Grounds: Invasion or rebellion, when public safety requires it.
 - .
- ii) Duration: Not to exceed sixty days, following which it shall be lifted, unless extended by Congress.
- iii) Duty of President to report action to Congress: within 48 hours, personally or in writing.
- iv) Congress may revoke [or extend on request of the President] the effectiveness of proclamation by a majority vote of all its members, voting jointly.

- v) 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 [*Sec. 18, Art. VII*]. See *Lartsang v. Garcia*, 42 SCRA 448.
- vi) The suspension of the privilege of the writ does not impair the right to bail [*Sec. 13, Art. III*].
- vii) The suspension applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
- viii) 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.

c) Martial Law. "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 civilians where civil courts are able to function, nor automatically suspend the privilege of the writ" [Sec. 18, Art. VII].

i) The constitutional limitations for the suspension of the privilege of the writ are likewise imposed on the proclamation of martial law.

5. *The Pardoning Power* [Sec. 19, Art. VII]: "Except in cases of impeachment, or as otherwise provided in the 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) Definitions:

i) *Pardon*. An act of grace which exempts the individual on whom it is bestowed from the punishment that the law inflicts for the crime he has committed.

ii) *Commutation*. Reduction or mitigation of the penalty.

iii) *Reprieve*. Postponement of a sentence or stay of execution.

iv) *Parole*. Release from imprisonment, but without full restoration of liberty, as parolee is still in the custody of the law although not in confinement.

v) *Amnesty*. Act of grace, concurred in by the legislature, usually extended to groups of persons who committed political offenses, which puts into oblivion the offense itself.

b) *Exercise by the President*. Discretionary; may not be controlled by the legislature or reversed by the courts, unless there is a constitutional violation. Thus, it was a legal malapropism for the trial court to interject par. 2, Art. 135, Revised Penal Code, recommending the grant of pardon after the convict shall have served a jail term of 5 years, considering that this was a prosecution under a special law, and that the matter of a pardon is within the President's exclusive prerogative [*People v. de Gracia, supra*].

c) Limitations on exercise:

- i) Cannot be granted in cases of impeachment [Sec. 19, Art. VII].
- ii) Cannot be granted in cases of violation of election laws without the favorable recommendation of the Commission on Elections [Sec. 5, Art. IX-C].

iii) Can be granted only after conviction by final judgment. In *People v. Salle*, 250 SCRA 581, reiterated in *People v. Bacang*, 260 SCRA 44, the Court declared that the 1987 Constitution prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from the judgment of conviction by the trial court. Any application for a pardon should not be acted upon, or the process toward its grant should not begin, unless the appeal is withdrawn. The ruling in *Monsanto v. Factoran*, 170 SCRA 190, which was laid down under the 1973 Constitution, is now changed by virtue of the explicit requirement under the 1987 Constitution. In *People v. Catido*, G.R. No. 116512, March 7, 1997, it was held that while the pardon was void for having been extended during the pendency of the appeal, or before conviction by final judgment, and therefore a violation of Sec. 19, Art. VII, the grant of amnesty, applied for by the accused-appellants under Proclamation No. 347, was valid.

iv) Cannot be granted in cases of legislative contempt (as it would violate separation of powers), or civil contempt (as the State is without interest in the same)

v) Cannot absolve the convict of civil liability. See *People v. Nacional*, G.R. No. 11294, September 7, 1995, where the Court said that the grant of conditional pardon and the subsequent dismissal of the appeal did not relieve the accused of civil liability.

vi) Cannot restore public offices forfeited [*Monsanto v. Factoran, supra*.] But see *Sabello v. DECS*, 180 SCRA 623, where a pardoned elementary school principal, on considerations of justice and equity, was deemed eligible for reinstatement to the same position of principal and not to the lower position of classroom teacher. On executive clemency re: administrative decisions, see *Garcia v. Chairman, Commission on Audit*, 226 SCRA 356.

d) Pardon Classified.

- i) Plenary or partial.
- ii) Absolute or conditional.

iia) On conditional pardon, see *Torres v. Gonzales*, 152 SCRA 273. The rule is reiterated in *In Re: Petition for Habeas Corpus of Wilfredo S. Sumulong, supra.*, that a conditional pardon is in the nature of a contract between the Chief Executive and the convicted criminal; by the pardonee's consent to the terms stipulated in the contract, the pardonee has placed himself under the supervision of the Chief Executive or his delegate who is duty bound to see to it that the pardonee complies with the conditions of the pardon. Sec. 64 (i), Revised Administrative Code, authorizes the President to order the arrest and reincarceration of such person who, in his judgment, shall fail to comply with the conditions of the pardon. And the exercise of this Presidential judgment is beyond judicial scrutiny.

e) Amnesty.

i) In *People v. Patriarca, G.R. No. 135457, September 29, 2000*, it was held that the person released under an amnesty proclamation stands before the law precisely as though he had committed no offense. Par. 3, Art. 89, Revised Penal Code, provides that criminal liability is totally extinguished by amnesty; the penalty and all its effects are thus extinguished.

ii) In *Vera v. People of the Philippines*, 7 SCRA 152, it was held that to avail of the benefits of an amnesty proclamation, one must admit his guilt of the offense covered by the proclamation.

iii) Distinguished from pardon: A - addressed to political offenses, P - infractions of peace of the state; A - classes of persons, P - individuals; A - no need for distinct acts of acceptance, P - acceptance necessary; A - requires concurrence of Congress, P - does not; A - a public act which the courts may take judicial notice of, P - private act which must be pleaded and proved; A - looks backward and puts into oblivion the offense itself, P - looks forward and relieves the pardonee of the consequences of the offense. See *People v. Casido, supra.*⁶

6. *The Borrowing Power. Sec. 20, Art. VII:* “The President may contract or guarantee foreign loans on behalf of the Republic with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within 30 days from the end of every quarter, submit to the Congress a complete report of its decisions 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.”

7. *The Diplomatic Power.* Sec. 21, Art. VII: "No treaty or international agreement shall be valid and effective unless concurred in by at least 2/3 of all the members of the Senate."

a) In *Commissioner of Customs v. Eastern Sea Trading*, 3 SCRA 351, the Supreme Court distinguished treaties from executive agreements, thus: (i) international agreements which involve political issues or changes of national policy and those involving international arrangements of a permanent character take the form of 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; and (ii) in treaties, formal documents require ratification, while executive agreements become binding through executive action.

b) But see *Bayan v. Executive Secretary*, G.R. No. 138570, October 10, 2000, where the Supreme Court said that the Philippine government had complied with the Constitution in that the Visiting Forces Agreement (VFA) was concurred in by the Philippine Senate, thus complying with Sec.-21, Art. VII. The Republic of the Philippines cannot require the United States to submit the agreement to the US Senate for concurrence, for that would be giving a strict construction to the phrase, "recognized as a treaty". Moreover, it is inconsequential whether the US treats the VFA as merely an executive agreement because, under international law, an executive agreement is just as binding as a treaty.

8. *Budgetary Power.* Sec. 22, Art. VII: "The President shall submit to Congress within 30 days from the opening of every regular session, as the basis of the general appropriations act, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures."

9. *The Informing Power.* Sec. 23, Art. VII: "The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time."

10. *Other powers:*

a) Call Congress to a special session [Sec. 15, Art. VI: "x x x The President may call a special session at any time"],

b) Power to approve or veto bills [Sec. 27, Art. VI].

- c) To consent to deputation of government personnel by the Commission on Elections [Sec. 2(4), Art. IX-C].
- d) To discipline such deputies [Sec. 2(8), Art. IX-C].
- e) By delegation from Congress, emergency powers [Sec. 23(2), Art. VI], and tariff powers [Sec. 28(2), Art. VII].
- f) General supervision over local governments and autonomous regional governments [Art. X].
 - i) See *Judge Dadole v. Commission on Audit*, G.R. No. 125350, December 2, 2002.

X. JUDICIAL DEPARTMENT

A. The Judicial Power

1. *Defined.* 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 [Sec. 1, par. 2, Art. VIII].

a) The second clause effectively limits the “political question” area which, heretofore, was forbidden territory for the courts.

b) The inherent powers of a Court to amend and control its processes and orders to as to make them conformable with law and justice includes the right to reverse itself, especially when, in its honest opinion, it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party litigant [*Tocao v. Court of Appeals*, G.R. No. 127405, September 20, 2001]. The Court is not precluded from examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality [*De Leon v. Court of Appeals*, G.R. No. 127182, December 5, 2001].

2. *Where vested:* In one Supreme Court and in such lower courts as may be established by law [Sec. 1, Art. VIII].

3. *Jurisdiction.* Jurisdiction is defined as the power to hear and decide a case.

a) 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 Sec. 5, Art. VIII [Sec. 2, Art. VIII],

b) No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in the Constitution without its advice and concurrence [Sec. 30, Art. VI].ⁱ⁾

i) Thus, Sec. 27, R.A. 6770, which authorizes an appeal to the Supreme Court from decisions of the Ombudsman in administrative disciplinary cases, was declared unconstitutional, because the provision was passed without the advice and consent of the Supreme Court [*Fabian v. Desierto*, G.R. No. 129742, September 16, 1998; *Villavertv. Desierto*, G.R. No. 133715, February 13, 2000].

B. Constitutional Safeguards to insure the independence of the Judiciary.

1. The Supreme Court is a constitutional body; it may not be abolished by the legislature.

2. The members of the Supreme Court are removable only by impeachment.

3. The Supreme Court may not be deprived of its minimum original and appellate jurisdiction; appellate jurisdiction may not be increased without its advice and concurrence.

4. The Supreme Court has administrative supervision over all inferior courts and personnel.

5. The Supreme Court has the exclusive power to discipline judges/ justices of inferior courts.

6. The members of the Judiciary have security of tenure.

7. The members of the Judiciary may not be designated to any agency performing quasi-judicial or administrative functions.

8. Salaries of judges may not be reduced; the Judiciary enjoys fiscal autonomy.

a) In *Re: Clarifying and Strengthening the Organizational Structure and Administrative Set-up of the Philippine Judicial Academy*, A.M. No. 01- 1-04-SC-Philja, 481 SCRA 1, the Supreme Court said that 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. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions. In downgrading the positions and salary grades of two positions in the Philippine Judicial Academy, the DBM overstepped its authority and encroached upon the fiscal autonomy of the Supreme Court and its power of supervision over court personnel, as enshrined in the Constitution.⁹

9. The Supreme Court, alone, may initiate and promulgate the Rules of Court.

10. The Supreme Court, alone, may order temporary detail of judges.
11. The Supreme Court can appoint all officials and employees of the Judiciary.

C. The Power of Judicial Review/Inquiry. [See: CHAPTER II.]

D. Appointment to the Judiciary.

1. *Qualifications:* Of proven competence, integrity, probity and independence [*Sec. 7 (3), Art. VIII*]. In addition:

a) Supreme Court: Natural born citizen of the Philippines, at least 40 years of age, for 15 years or more a judge of a lower court or engaged in the practice of law in the Philippines [*Sec. 7 (1), Art. VIII*].

b) Lower Collegiate Courts: Natural born citizen of the Philippines, member of the Philippine Bar, but Congress may prescribe other qualifications [*Sec. 7 (1) and (2), Art. VIII*].

c) Lower Courts: Citizen of the Philippines, member of the Philippine Bar, but Congress may prescribe other qualifications [*Sec. 7 (1) and (2), Art. VIII*].

2. *Procedure for Appointment.*

a) Appointed by the President of the Philippines from among a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy; the appointment shall need no confirmation [*Sec. 9, Art. VIII*].

b) Any vacancy in the Supreme Court shall be filled within ninety (90) days from the occurrence thereof [*Sec. 4 (1). Art. VIII*],

c) For lower courts, the President shall issue the appointment within ninety (90) days from the submission by the JBC of such list [*Sec. 9, Art. VIII*].ⁱ⁾

i) Relate this to the constitutional prohibition against midnight appointments [*Sec. 15, Art. VIII*] which states that 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. In *Re: Mateo Valenzuela, A.M. No. 98-5-01-*

SC, November 9, 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 issuance of the appointment during the period of the ban.

3. *The Judicial and Bar Council.*

a) Composition [*Sec. 8 (1), Art. VIII*]:

i) Ex-officio members: Chief Justice, as Chairman; the Secretary of Justice, and a representative of Congress.

ii) Regular members: A representative of the Integrated Bar of the Philippines, a professor of law, a retired justice of the Supreme Court, and a representative of the private sector.

iii) Secretary ex-officio: The Clerk of the Supreme Court.

b) Appointment: The regular members shall be appointed by the President for a term of four [4] years, with the consent of the Commission on Appointments. They shall receive such emoluments as may be determined by the Supreme Court [*Sec. 8 (2), Art. VIII*].

c) Powers/Functions: Principal function of recommending appointees to the Judiciary. May exercise such other functions and duties as the Supreme Court may assign to it [*Sec. 8 (5), Art. VIII*].

E. The Supreme Court.

1. Composition: A Chief Justice and 14 Associate Justices. It may sit en banc or in its discretion, in divisions of three, five or seven members. Any vacancy shall be filled within 90 days from occurrence thereof [*Sec. 4(1), Art. VIII*],

2. *En Banc/Division Cases:*

a) En Banc: All cases involving the constitutionality of a treaty, international or executive agreement, or law; and all other cases which, under the Rules of Court, are to be heard en banc, including those involving the constitutionality, application or operation of presidential decrees, proclamations, orders, instructions, ordinances and other regulations. These cases are decided with the concurrence of a majority of the members who actually took part in the deliberations on the issues and voted thereon.

b) Division: Other cases or matters may be heard in division, and decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues and voted thereon, but in no case without the concurrence of at least three (3) such members.

i) When the required number is not obtained, the case shall be decided en banc. In *Fortich v. Corona*, G.R. No. 131457, August 19, 1999, the Supreme Court interpreted the provision by drawing a distinction between "cases" on the one hand, and "matters" on the other hand, such that cases are "decided", while matters are "resolved". On the basis of this distinction, only "cases" are referred to the Supreme Court en banc for decision whenever the required number of votes is not obtained.

ii) 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.

iii) The reorganization (of the three divisions) of the Court is purely an internal matter in which the petitioner has no business at all. With its new membership, the Court is not obliged to follow blindly a decision upholding a party's case when, after its re-examination, the rectification appears proper and necessary [*Limketkai Ssns Milling v. Court of Appeals*, 261 SCRA 464].

3. Powers [Sec. 5, Art. VIII]:

a) Original jurisdiction: over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto and habeas corpus.

b) Appellate jurisdiction: Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or Rules of Court may provide, final judgments and orders of lower courts in (i) 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; (ii) all cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto; (iii) all cases in which the jurisdiction of any lower court is in issue; (iv) all criminal cases in which the penalty imposed is reclusion perpetua or higher; and (v) all cases in which only an error or question of law is involved.ⁱ⁾

i) Note that this power does not include the power of the Supreme Court to review decisions of administrative bodies, but is limited to "final judgments and orders of lower courts" [*Ruffy v. Chief of Staff*,

ii) Only in cases where the penalty actually imposed is death must the trial court forward the records of the case to the Supreme Court for automatic review of the conviction [*People v. Redulosa*, 255 SCRA 279]. Where the penalty imposed is merely reclusion perpetua, the accused should appeal the decision of conviction, otherwise, the judgment of conviction will become final and executory [*Garcia v. People*, G.R. No. 106531, November 18, 1999].

iii) *Sec. 30, Art. VI*, provides that no law shall be passed increasing the appellate jurisdiction of the Supreme Court without its concurrence. Thus, in *Fabian v. Desierto*, G.R. No. 129742, September 16, 1998, Sec. 27, R.A. 6770, which provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court through Rule 45 of the Rules of Court, was declared unconstitutional, because it expands the Supreme Court's jurisdiction without its advice and concurrence. See also *Namuhe v. Ombudsman*, G.R. No. 124965, October 29, 1998, and *Tirol v. Sandiganbayan*, G.R. No. 135913, November 4, 1999; *Villavert v. Desierto*, G.R. No. 133715, February 13, 2000.

iv) In *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 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.

c) Temporary assignment of judges of lower courts to other stations as public interest may require; but the assignment shall not exceed six months without the consent of the judge concerned.

d} Order change of venue or place of trial, to avoid miscarriage of justice. See *People v. Gutierrez*, 39 SCRA 173.

e) Rule Making Power: 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.ⁱ⁾

i) *Limitations on the rule-making power*. The rules must provide a simplified and inexpensive procedure for the speedy disposition of cases; they must be uniform for all courts of the same grade; and must not diminish, increase or modify substantive rights. See *Primicias v. Ocampo*, 93 Phil. 451,

which is authority for the principle that trial by assessors is a substantive right and may not be repealed by the Supreme Court. Likewise, in *First Lepanto Ceramics v. Court of Appeals, G.R. No. 110571, 1994*, it was held that Supreme Court Circular No. 1-91, which orders that appeals from decisions of administrative bodies shall now be filed with the Court of Appeals, did not repeal E.O. 226, and did not diminish, increase or modify the substantive right to appeal. It merely transferred the venue of appeals from decisions of said agencies to the Court of Appeals, and provided a different period (15 days from notice), both of which are merely procedural in character.

ii) In *Re: Request for Creation of a Special Division, A.M. No. 02-1-09-SC, January 21, 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 against former President Joseph Estrada.

iii) An “Integrated Bar” is a State-organized Bar, to which every lawyer must belong, as distinguished from a bar association organized by individual lawyers themselves, membership in which is voluntary. Integration of the Bar is essentially a process by which every member of the Bar is afforded an opportunity to do his share in carrying out the objectives of the Bar as well as obliged to bear his portion of its responsibilities, x x The integration of the Philippine Bar means the official unification of the entire lawyer population. This requires membership and financial support of every attorney as condition 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, 49 SCRA 22*].

iiia) Thus, 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 for 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 [*Letter of Atty. Cecilio Y. Arevalo, Jr., Requesting Exemption from Payment of IBP Dues, B.M. No. 1370, May 9, 2005*].

iiib) The enforcement of the penalty of removal does not amount to deprivation of property without due process of law. The practice of law is not a property right but a mere privilege, and as such must bow to the inherent regulatory power of the Supreme Court to exact compliance with the lawyer's

public responsibilities [In Re Atty. Marcial Edillon, A.C. No. 1928, August 3, 1978],

iv) *The writ of amparo.* The nature and time-tested role of *amparo* has shown that it is an effective and inexpensive instrument for the protection of constitutional rights [*Azcuna, The Writ of Amparo: A Remedy to Enforce Fundamental Rights*, 37 Ateneo L.J. 15 (1993)]. *Amparo*, literally “to protect”, originated in Mexico and spread throughout the Western Hemisphere where it gradually evolved into various forms, depending on the particular needs of each country.

iva) By Resolution in A.M. No. 07-9-12-SC, the Supreme Court promulgated the Rule on the Writ of Amparo, and it took effect on October 24, 2007. Section 1 thereof provides: “*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 an unlawful act or omission of a public official or employee, or of a private individual or entity*”

ivb) An extraordinary feature is Section 14 of the Rule which allows the grant by the court of interim reliefs, which may either be a *temporary protection order, inspection order, production order* or a *witness protection order*.

ivc) No writ of amparo may be issued unless there is a clear allegation of the supposed factual and legal basis of the right sought to be protected. Petitioners right to their dwelling, assuming they still have any despite the final and executory judgment adverse to them, does not constitute right to life, liberty and security. There is, therefore, no legal basis for the issuance of the writ of amparo [*Canlas v. Napico Homeowners Association*, G.R. No. 182795, June 5, 2008].

ivd) The writ of amparo shall not issue when applied for as a substitute for the appeal or certiorari process, or when it will inordinately interfere with these processes [*Tapuz v. Del Rosario*, G.R. No. 182484, January 17, 2008].

v) *The writ of habeas data.* The writ of *habeas data* is an independent remedy to protect the right to privacy, especially the right to informational privacy. The essence of the constitutional right to informational privacy goes to the very heart of a person’s individuality, an exclusive and personal sphere upon which the State has no right to intrude without any legitimate public concern. The basic attribute of an effective right to informational privacy is the right of the individual to control the flow of information concerning or describing them.

vb) By Resolution in *A.M. No. 08-1-16-SC*, the Supreme Court promulgated the Rule on the Writ of Habeas Data, effective February 2, 2008. Section 1 thereof provides: "*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 with violation 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, honor and correspondence of the aggrieved party.*"

vi) Congress cannot amend the Rules of Court. In *Echegaray v. Secretary of Justice, G.R. No. 132601, January 19, 1999*, the Supreme Court declared: "But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading, practice 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."

vii) Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court [*Sec. 5 (5), Art. VIII*].

f) Power of Appointment: The Supreme Court appoints all officials and employees of the Judiciary in accordance with the Civil Service Law [*Sec. 5 (6), Art. VIII*].

g) Power of Administrative Supervision: The Supreme Court shall have administrative supervision over all courts and the personnel thereof [*Sec. 6, Art. VIII*].

i) The Ombudsman may not initiate or investigate a criminal or administrative complaint before his office against a judge; he must first indorse the case to the Supreme Court for appropriate action [*Fuentes v. Office of the Ombudsman-Mindanao, G.R. No. 124295, October 23, 2001*]. In the absence of any administrative action taken against the RTC Judge by the Supreme Court with regard to the former's certificate of service, the investigation conducted by the Ombudsman encroaches into the Supreme Court's power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers [*Maceda v. Vasquez, 221 SCRA 469; Dolalas v. Office of the Ombudsman, 265 SCRA 819*].

ii) 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; it can take years to build a reputation and

only a single accusation, although unfounded, to destroy it [*Godinez v. Alano, A.M. RTJ-98-1409, February 18, 1999*],

h) Annual Report: Supreme Court to submit, within 30 days from the opening of each regular session of Congress, to the President and to Congress an annual report on the operations and activities of the Judiciary [Sec. 16, Art. VIII].

4. Consultations/Decisions of Supreme Court [Secs. 13 & 14, Art. VIII].

a) Conclusions in any case submitted to it for decision 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. This requirement is applicable also to lower collegiate courts.

i) But this requirement does not apply to administrative cases [*Prudential Bank v. Castro, 158 SCRA 646*],

ii) When the votes are equally divided and the majority vote is not obtained, then pursuant to Sec. 7, Rule 56 of the Rules of Civil Procedure, the petition shall be dismissed [*Cruz v. Secretary, DENR, G.R. No. 135385, December 6, 2000*],

b) The decision shall state clearly and distinctly the facts and the law on which it is based.

i) But 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; Borromeo v. Court of Appeals, 186 SCRA 1*]. Neither will it apply to administrative cases [*Prudential Bank v. Castro, supra.*].

ii) This constitutional mandate does not 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. "Memorandum decisions" are a species of succinctly written decisions by appellate courts in accordance with the provisions of Sec. 40, B.P. 129, as amended, on the grounds of expediency, practicality, convenience and docket status of our courts. But to be valid, it cannot incorporate the findings of fact and the conclusions of law of the lower court only by means of remote reference, which is to say that the challenged decision is not easily and immediately available to the person reading the memorandum decision. For the incorporation by

reference to be allowed, it must provide for direct access to the facts and the law being adopted, which must be contained in a statement attached to the said decision. In other words, the memorandum decision should actually embody the findings of facts and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision [*Solid Homes v. Laserna, G.R. No. 166051, April 8, 2008*].

iii) 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. Thus, in *Dizon v. Judge Lopez, AM. No. RTJ-96-1338, September 5, 1997*, the decision, which consisted only of the dispositive portion (denominated a *sin perjuicio judgment*) was held invalid.

iv) In *People v. Baring, G.R. No. 137933, January 28, 2002*, the Supreme Court said that the trial court's decision may cast doubt on the guilt of the accused, not by the lack of direct evidence against the accused but by the trial court's failure to fully explain the correlation of the facts, the weight or admissibility of the evidence, the assessments made from the evidence, and the conclusion drawn therefrom, after applying the pertinent law as basis of the decision. Likewise, in *De Vera v. Judge Dames, A.M. RTJ-99-1455, July 13, 1999*, because the respondent judge had precipitately concluded that the letter was defamatory without sufficiently explaining why, he was deemed to have violated Sec. 14, Art. VIII, and although there was no clear proof of malice, corrupt motives or improper consideration, the Judge must still be sanctioned.

c) No petition for review or motion for reconsideration shall be refused due course or denied without stating the legal basis therefor.

i) In *Fr. Martinez v. Court of Appeals, G.R. No. 123547, May 21, 2001*, 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 and 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.

ii) In *Prudential Bank v. Castro, supra.*, 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. In *Komatsu Industries v. Court of*

Appeals, G.R. No. 127682, April 24, 1998, it was held that when the Court, after deliberating on a petition and any subsequent pleadings, manifestations, comments or motions, decides to deny due course to a petition, and states — in a minute resolution — that the questions raised are factual or no reversible error in the respondent court's decision is shown or some other legal basis stated in the resolution, there is sufficient compliance with the constitutional requirement. This is reiterated in *Tichangco v. Enriquez, G.R. No. 150629 June 30, 2004*.

F. Tenure of Judges/Justices.

1. *Supreme Court*: Justices may be removed only by impeachment Sec 2, Art. XI].

a) In *Re: First Indorsement from Hon. Raul M. Gonzalez, A.M. No. 88-4-5433, April 15, 1988*, the Supreme Court said that the Special Prosecutor (Tanodbayan) is without authority to conduct an investigation on charges against a member of the Supreme Court with the end in view of filing a criminal information against him with the Sandiganbayan. This is so, because if convicted in the criminal case, the Justice would be removed, and such removal would violate his security of tenure.

2. *Lower Courts*: Judges shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office [Sec. 11, Art. VIII],

a) The Supreme Court en banc shall have the power to 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 and voted thereon [Sec. 11, Art. VIII].

i) In *People v. Judge Gacott, 246 SCRA 52*, it was held that the first clause in the said section is a declaration of the grant of the disciplinary power to, and the determination of the procedure in the exercise thereof by, the Court en banc. It did not intend that all administrative disciplinary cases should be heard and decided by the whole Court. The second clause, intentionally separated from the first by a comma, declares that the Court en banc may order their dismissal by a vote of a majority". Thus, only cases involving dismissal of judges of lower courts are specifically required to be decided by the Court *en banc*.

ii) In the absence of any administrative action taken against the RTC Judge by the Supreme Court with regard to his certificate of service,

the investigation being conducted by the Ombudsman encroaches into the Supreme Court's power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers [*Maceda v. Vasquez, supra.*]. In *Judge Caoibes v. Ombudsman*, G.R. No. 132177, July 17, 2001, it was held that because of Sec. 6, Art. VIII, vesting in the Supreme Court exclusive administrative supervision over all courts and its personnel, the Ombudsman cannot determine for itself and by itself whether a criminal complaint against a judge or court employee involves an administrative matter. The Ombudsman is duty bound to have all cases against judges and court personnel filed before it referred to the Supreme Court. See also *Fuentes v. Office of the Ombudsman-Mindanao*, G.R. No. 124295, October 23, 2001.

iii) In *Office of the Judicial Administrator v. Pascual*, A.M. No. MT-93-783, July 29, 1996, the Supreme Court, reiterating *Raquiza v. Castaneda*, declared that 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, incompetence, etc.. Thus, in *De Vera v. Dames*, A.M. No. RTJ-99-1455, July 13, 1999, the Supreme Court said that judges cannot be disciplined for every erroneous order or decision rendered in the absence of a clear showing of ill motive, malice or bad faith. This, however, is not license forthem to be negligent or abusive in performing their adjudicatory prerogatives. The absence of bad faith or malice will not totally exculpate them from charges of incompetence and ignorance of the law when they render decisions that are totally bereft of factual and legal bases. This was reiterated in *Dayot v. Judge Garcia*, A.M. No. MTJ-00-1282, March 1, 2001, where the judge was nonetheless taken to task for issuing an order discrediting the period served by the prisoner outside the jail without giving the prisoner a chance to be heard, thus betraying his ignorance of the cardinal principles of due process. In *De Guzman v. Judge Sison*, A.M. No. RTJ-01-1629, March 26, 2001, the Supreme Court said that the respondent had shamed the judiciary by deliberately applying not only patently inapplicable but also already repealed laws. The judge was dismissed from the service, because according to the Court, when the law violated is elementary, the failure to know or observe it constitutes gross ignorance of the law. In *Spouses Antonio & Elsa Fortuna v. Judge Penaco-Sitaca*, A.M. No. RTJ-01-1633, June 19, 2001, because the judge accepted at face value a mere machine copy of the bail bond issued by another court, the judge was subjected to administrative sanction, because it is highly imperative that judges should be conversant with basic legal principles and be aware of well-settled authoritative doctrines. In *Agulan v. Judge Fernandez*, A.M. No. MTJ- 01-1354, April 4, 2001, for receiving the deposit of cash as bail and keeping the same in his office, the judge was held administratively liable, even after the complainant executed an affidavit of desistance.

iv) However, in *Re: Derogatory News Item Charging Court of Appeals Associate Justice Demetrio Demetria with Interference on Behalf of A Suspected Drug Queen*, A.M. No. 00-7-09-CA, March 27, 2001, the Supreme Court said that although every office in government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness than a seat in the Judiciary. High ethical principles and a sense of propriety should be maintained, without which the faith of the people in the Judiciary so indispensable in an orderly society cannot be preserved. There is simply no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. Similarly, in *Re: Release by Judge Manuel T. Muro, RTC Branch 54, Manila, of an Accused in a Non-Bailable Offense*, A.M. No. 00-7-323-RTJ, October 17, 2001, where the judge, despite opposition from the prosecution, simply issued an order submitting for resolution the motion and the opposition without the same being heard, and later, granting the motion for extension of medical confinement for two months, the Supreme Court found the judge guilty of gross misconduct for being utterly inefficient and for manifest partiality. And it is said that when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds, or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

b) No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its members [Sec. 2, Art. VIII],

i) In *De la Liana v. Alba*, 112 SCRA 294, it was held that B.P. 129 was a valid reorganization law, and that, therefore, the abolition of then existing judicial offices did not violate security of tenure. [NOTE; In view of the clear declaration of Sec. 2, Art. VIII, the ruling in De la Liana, as well as that in *Ocampo v. Secretary of Justice*, L-7918, January 18, 1955, may be said to have been modified accordingly.]

G. Salaries. Fixed by law; may not be decreased during their continuance in office. In *Nitafan v. Tan*, 152 SCRA 284, it was held that imposition of income tax on salaries of judges does not violate the constitutional prohibition against decrease in salaries.

H. Periods for Decision [Sec. 15, Art. VIII].

1. All cases filed after the effectivity of the Constitution must be decided or resolved, from date of submission, within: 24 months - Supreme Court; 12 months - lower collegiate courts; and 3 months - all other lower courts; unless, in the two latter cases, the period is reduced by the Supreme Court.

A certification to be signed by the Chief Justice or Presiding Justice shall be issued stating the reason for delay. -

a) While it is truly the duty of the Judge to decide cases with good dispatch, he must not sacrifice for expediency's sake the fundamental requirements of due process, nor forget that he must conscientiously endeavor each time to seek the truth, to know and aptly apply the law, and to dispose of the controversy objectively and impartially, all to the end that justice is done to every party [*Young v. Judge De Guzman*, A.M. No. RTJ-96-1365, February 18, 1999],

b) In *Dizon v. Judge Lopez*, A.M. No. RTJ-96-1338, September 5, 1997, respondent Judge was held to have violated Sec. 15, Art. VIII, because although she promulgated her decision within three months from submission, only the dispositive portion was read at such promulgation, and it took one year and 8 months more before a copy of the complete decision was furnished the complainant. What respondent did was to render a "sin perjuicio" judgment, which is a judgment without a statement of the facts in support of its conclusions, to be later supplemented by the final judgment. As early as 1923, the Supreme Court already expressed its disapproval of the practice of rendering "sin perjuicio" judgments. What should be promulgated must be the complete decision.

c) Sec. 15, Art. VIII, is designed to prevent delay in the administration of justice, and judges are repeatedly reminded that failure to decide cases within the prescribed period is not excusable and constitutes gross inefficiency which is a ground for administrative sanction against the defaulting judge [*Report on the Judicial Audit in RTC Branch 27 of Lapulapu City*. A.M. Case No. 97-9-282-RTC, April 22, 1998]. Thus, in *Sanchez v. Judge Vestil*, A.M. No. RTJ-98-1419, October 13, 1998, the Supreme Court said that judges who cannot comply with this mandate should ask for additional time, explaining in their request the reasons for the delay. In *Ricolcol v. Judge Camarista*, A.M. MTJ-98-1161, August 17, 1999, the Supreme Court said that a judge cannot be allowed to blame her court personnel for her own incompetence or negligence. She ought to know the cases submitted to her for decision or resolution and is expected to keep her own record of cases so that she may act on them promptly. Neither does delay in the transcription of stenographic notes excuse such failure, nor do additional assignments or designations make him less liable for the delay [*Gonzales-Decano v. Judge Siapno*, A.M. No. MTJ-00-1279, March 1, 2001].²

2. Despite expiration of the 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 to it without

a) The court does not lose jurisdiction over the case, despite the lapse of the mandatory period, but the erring judge or justice may be subjected to administrative sanctions for the delay.

3. Interpreting a similar provision in the 1973 Constitution, in *Marcelino v. Cruz*, 121 SCRA 51, reiterated in *New Frontier Mines v. NLRC*, 129 SCRA 502, the Supreme Court held that the provision is merely directory, being procedural in nature. However, in *Bernardo v. Judge Fabros*, A.M. No. MTJ- 99-1189, May 12, 1999, the Supreme Court said that the failure of the judge to decide a case within the reglementary period constitutes gross dereliction of duty the gravity of which depends on several factors, including the number of cases not decided on time, the damage suffered by the parties as a result of the delay, and the presence of other aggravating or mitigating circumstances. Other cases where administrative sanctions were imposed by the Supreme Court on judges for failure to decide/resolve cases/matters within the periods prescribed in the Constitution: *Pros. Robert Visbal v. Judge Ramos*, A.M. No. MTJ-00-1306, March 20m 2001; *Atty. Montes v. Judge Bugtas*, A.M. No. RTJ- 01-1627, April 17, 2001; *Maquiran v. Judge Lopez*, A.M. No. RTJ-00-1606; *Canada v. Judge Montecillo*, A.M. No. RTJ- 01-1664; *In Re: Report on the Judicial Audit Conducted in the RTC Branch 69, Silay City, Judge Arinday, respondent*, A.M. No. 99-5-162-RTC, May 11, 2001; *Report on the Judicial Audit in the MTC's of Calasiao, Binmaley, Sta. Barbara and Mapandan and in the MCTC of Tayug-San Nicolas, all in Pangasinan*, A.M. No. MTJ-01-1375, November 13, 2001[*Arap v. Judge Mustafa*, A.M. No. SCC-01-7, March 12 2002.]

a) In *Re: Problem of Delays in Cases Before the Sandiganbayan*, A. M. No. 00-8-05-SC, November 08, 2001, Sandiganbayan Presiding Justice Francis Garchitorena was fined P20,000 and was relieved of his powers, functions and duties as Presiding Justice, so that he may devote himself exclusively to decision-writing. His motion for reconsideration was denied on January 31, 2002.

XII. CONSTITUTIONAL COMMISSIONS

A. General Provisions.

1. The independent constitutional commissions are the Civil Service Commission, the Commission on Elections and the Commission on Audit [Sec. 1, Art. IX-A].

2. *Safeguards insuring the independence of the Commissions:*

- a) They are constitutionally created; may not be abolished by statute.
- b) Each is expressly described as "independent".
- c) Each is conferred certain powers and functions which cannot be reduced by statute.
- d) The Chairmen and members cannot be removed except by impeachment.
- e) The Chairmen and members are given a fairly long term of office of seven years.
- f) The Chairmen and members may not be reappointed or appointed in an acting capacity
 - i) In *Brillantes v. Yorac*, 192 SCRA 358, it was held that the designation of Commissioner Yorac as Acting Chairman of the Commission on Elections was a violation of this provision.
 - ii) In *Matibag v. Benipayo, supra.*, the Supreme Court said that when an *ad interim* appointment (of the Chairman of the Commission on Elections) is not confirmed (as it was by-passed, or that there was not 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.
- g) The salaries of the chairman and members are relatively high and may not be decreased during continuance in office.
- h) The Commissions enjoy fiscal autonomy.

i) In *Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005, the Supreme Court said that the “no report, no release” policy may not be validly enforced against offices vested with fiscal autonomy, without violating Sec. 5, Art. 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, x x x 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. Sec. 3, Art. VIII, prohibiting the reduction in the appropriation for the Judiciary below the amount appropriated for the previous year, does not appear in Sec. 5, Art. 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.

ii) In *Commission on Human Rights Employees Association v. Commission on Human Rights*, G.R. No. 155336, November 25, 2004, the Supreme Court said that the Commission on Human Rights, unlike the three Constitutional Commissions, does not enjoy fiscal autonomy.

r) Each Commission may promulgate its own procedural rules, provided they do not diminish, increase or modify substantive rights [though subject to disapproval by the Supreme Court],

j) The Chairmen and members are subject to certain disqualifications calculated to strengthen their integrity.

k) The Commissions may appoint their own officials and employees in accordance with Civil Service Law.

3. *Inhibitions/Disqualifications*

- a) Shall not, during tenure, hold any other office or employment.
- b) Shall not engage in the practice of any profession.
- c) 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.

d) 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 corporations or their subsidiaries.⁴

4. *Rotational Scheme of Appointments.* The first appointees shall serve terms of seven, five and three years, respectively. After the first

are appointed, the rotational scheme is intended to prevent the possibility of one President appointing all the Commissioners.

a) In *Gaminde v. Commission on Audit*, G.R. No. 140335, December 13, 2000, it was held that in order to preserve the periodic succession mandated by the Constitution, the rotational plan requires two conditions: [i] The terms of the first commissioners should start on a common date; and [ii] Any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term.

5. Decisions.

a) 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. [Sec. 7, Art. IX-A],

i) The provision of the Constitution 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 in order that a valid decision may be made by the Constitutional Commissions. Under rules of statutory construction, it is to be assumed that the words in which the constitutional provisions are couched express the objective sought to be attained [*Estrella v. Comelec*, G.R. No. 160465, May 27, 2004]. This ruling abandons the doctrine laid down in *Cua v. Comelec*, 156 SCRA 582.

ii) In *Dumayas v. Comelec*, G.R. No. 141952-53, April 20, 2001, because two Commissioners who had participated in the deliberations had retired prior to the promulgation of the decision, the Supreme Court said that the votes of the said Commissioners should merely be considered withdrawn, as if they had not signed the resolution at all, and only the votes of the remaining Commissioners considered for the purpose of deciding the controversy. Unless the withdrawal of the votes would materially affect the result insofar as votes for or against a party is concerned, there is no reason to declare the decision a nullity. In this case, with the withdrawal of the votes of Commissioners Gorospe and Guiani, the remaining votes among the four incumbent commissioners, still constituting a quorum at the time of the promulgation of the resolution, would still be 3 to 1 (and thus, be a vote of the majority) in favor of the respondent.

iii) As to the need to expedite resolution of cases and the 60-day period for decision, in *Alvarez v. Comelec*, G.R. No. 142527, March 1, 2001, the Supreme Court said that the Comelec has numerous cases before it where attention to minutiae is critical. Considering the Commission's manpower and

logistical limitations, it is sensible to treat the procedural requirements on deadlines realistically. Overly strict adherence to deadlines might induce the Commission to resolve election contests hurriedly by reason of lack of material time. This is not what the framers had intended.

b) Any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within 30 days from receipt of a copy thereof.

i) In *Aratuc v. Comelec*, 88 SCRA 251, the Supreme Court held that when it reviews a decision of the Comelec, the Court exercises extraordinary jurisdiction; thus, the proceeding is limited to issues involving grave abuse of discretion resulting in lack or excess of jurisdiction, and does not ordinarily empower the Court to review the factual findings of the Commission. In *Loong v. Comelec*, G.R. No. 133676, April 14, 1999, the Court reiterated that certiorari under Rule 65 of the Rules of Court is the appropriate remedy to invalidate disputed Comelec resolutions, i.e., final orders, rulings and decisions of the Comelec rendered in the exercise of its adjudicatory or quasi-judicial powers.

ii) In *Reyes v. Commission on Audit*, G.R. No. 125129, March 29, 1999, the Court said that under Rule 64, Sec. 2, 1997 Rules of Civil Procedure, 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. Even before the effectivity of the 1997 Rules of Civil Procedure, the mode of elevating cases decided by the Commission on Audit to the Supreme Court was only by petition for certiorari under Rule 65, as provided by the Constitution. The judgments and final orders of COA are not reviewable by ordinary writ of error or appeal by certiorari to the Supreme Court. Only when the COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65.

iii) In the case of decisions of the Civil Service Commission, however, Supreme Court Revised Circular 1-91, as amended by Revised Administrative Circular 1 -95, which took effect on June 1, 1995, provides that final resolutions of the Civil Service Commission shall be appealable by certiorari to the Court of Appeals within fifteen days from receipt of a copy thereof. From the decision of the Court of Appeals, the party adversely affected thereby shall file a petition for review on certiorari under Rule 45 of the Rules of Court.

iiia) Thus, in *Mahinayv. Court of Appeals*, G.R. No. 152457, April 30, 2008, the Supreme Court held that the proper mode of appeal from the decision of the Civil Service Commission is a petition for review under Rule 43 filed with the Court of Appeals.

iiib) in *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, because the petitioner imputed to the Court of Appeals "grave abuse of discretion" for ruling that he had no legal standing to contest the disapproval of his appointment, the Supreme Court said that "grave abuse of discretion is a ground for a petition for certiorari under Rule 65 of the Rules of Court". Nonetheless, the Supreme Court resolved to give due course to the petition and to treat it appropriately as a petition for review on certiorari under Rule 45 of the Rules of Court. The grounds alleged shall be deemed "reversible errors", not "grave abuse of discretion".

6. Enforcement of Decision. In *Vital-Gozon v. Court of Appeals*, 212 SCRA 235, it was held that final decisions of the Civil Service Commission are enforceable by a writ of execution that the Civil Service Commission may itself issue.

B. The Civil Service Commission

1. *Composition:* A Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least 35 years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the election immediately preceding their appointment. They shall be appointed by the President with the consent of the Commission on Appointments for a term of seven [7] years without reappointment. In no case shall any member be appointed or designated in a temporary or acting capacity. See *Brillantes v. Yorac, supra..*

2. *Constitutional Objectives/Functions:* As the central personnel agency of the Government, to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service. To strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and to institutionalize a management climate conducive to public accountability [Sec. 3, Art. IX-B],

a) In the exercise of its powers to implement R.A. 6850 (granting civil service eligibility to employees under provisional or temporary status who have rendered seven years of efficient service), the Civil Service Commission enjoys wide latitude of discretion, and may not be compelled by mandamus to issue such eligibility [*Torregosa v. Civil Service Commission*, 211 SCRA 230]. But the Commission 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. Civil Service Commission*, G.R. No. 115863, March 31, 1995].

b) Under the Administrative Code of 1987, the Civil Service Commission has the power to hear and decide administrative cases instituted before it directly or on appeal, including contested 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. Civil Service Commission*, 237 SCRA 184, it was held that the power of the Civil Service Commission includes the authority to recall an appointment initially approved in disregard of applicable provisions of the Civil Service law and regulations [*Mathay v. Civil Service Commission*, G.R. No. 130214, August 9, 1999].

c) The Commission has original jurisdiction to hear and decide a complaint for cheating in the Civil Service examinations committed by government employees. The fact that the complaint was filed by the Civil Service Commission itself does not mean that it cannot be an impartial judge [*Cruz v. Civil Service Commission*, G.R. No. 144464, November 22, 2001],

d) It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure, that decisions of lower level officials (in cases involving personnel actions) be appealed to the agency head, then to the Civil Service Commission. The Regional Trial Court does not have jurisdiction over such personnel actions [*Olanda v. Bugayong*, G.R. No. 140917, October 10, 2003, citing *Mantala v. Salvador*, 206 SCRA 264],

e) But the Commission does not have appellate jurisdiction over a case of separation from government service made pursuant to Sec. 2, Art. II of the Provisional Constitution, which provided: "All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order, or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986" [*Ontiveros v. Court of Appeals*, G.R. No. 145401, May 07, 2001],

3. *Scope of the Civil Service:* Embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned and controlled corporations with original charters [Sec. 2(1), Art. IX-B].

a) In *TUPAS (Trade Unions of the Philippines and Allied Services) v. National Housing Corporation* (1990), it was held that the NHC is not embraced in the civil service, and that employer-employee relationship therein is governed not by the Civil Service Law but by the Labor Code of the Philippines. See also *National Service Corporation v. NLRC*, 168 SCRA 122. In *Juco v. NLRC*,

G.R. No. 98107. August 18, 1997, it was held that employment relations in the National Housing Corporation (NHC) are within the jurisdiction of the NLRC, not the CSC, even if the controversy arose prior to 1987, because, as held in NASECO v. NLRC, supra., it is the Constitution in place at the time of the decision which governs. In this case, the Supreme Court declared that the phrase "with original charter" refers to corporations chartered by special law as distinguished from corporations organized under the Corporation Code.

b) Conversely, in *University of the Philippines v. Regino*, 221 SCRA 598, it was held that the University of the Philippines, having been created by a special law and having an original charter, is clearly part of the Civil Service. In *Mateo v. Court of Appeals*, 247 SCRA 284, it was held that the Morong Water District, a quasi-public corporation created pursuant to P.D. 198, is a government-owned corporation with an original charter. Accordingly, its employees fall within the jurisdiction of the Civil Service Commission, and the RTC has no jurisdiction to entertain cases involving dismissal of officers and employees in the said water district.

i) The Economic Intelligence and Information Bureau is a government agency within the scope of the coverage of the Civil Service [*EIIB v. Court of Appeals*, G.R. No. 129133, November 25, 1998]. Likewise, the Jose M. Rodriguez Memorial Hospital is a government hospital exercising governmental functions; it falls within the scope of the coverage of the Civil Service [*Department of Health v. National Labor Relations Commission*, 251 SCRA 700]. The Philippine National Red Cross (PNRC) is a government-owned and -controlled corporation with an original charter under R.A. No. 95, as amended. Paid staff of the PNRC are government employees who are members of the GSIS and covered by the Civil Service law [*Camporedondo v. NLRC and PNRC*, G.R. No. 129049, August 6, 1999].

4. Classes of Service:

a) Career Service. Characterized by entrance based on merit and fitness to be determined, as far as practicable by competitive examinations, or based on highly technical qualifications; opportunity for advancement to higher career positions; and security of tenure. The positions included in the career service are: (i) Open career positions, where prior qualification in an appropriate examination is required; (ii) Closed career positions, e.g., scientific or highly technical in nature; (iii) Career Executive Service, e.g., undersecretaries, bureau directors, etc.; (iv) Career Officers (other than those belonging to the Career Executive Service) who are appointed by the President, e.g., those in the foreign office; (v) Positions in the Armed Forces of the Philippines, although governed by a separate merit system; (vi) Personnel of government-owned

or controlled corporations with original charters; (vii) Permanent laborers, whether skilled, semi-skilled or unskilled.

i) Career Executive Service (CES). On May 31, 1994, the Civil Service Commission issued Memorandum Circular No. 21, series of 1994, identifying the positions covered by the Career Executive Service, as well as "all other third level positions of equivalent category in all branches and instrumentalities of the national government, including government owned and controlled corporations with original charters" provided that the position is a career position, is above division chief level, and the duties and responsibilities of the position require the performance of executive or managerial functions. "Incumbents of positions which are declared to be Career Executive Service 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.

ia) Thus, in *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, the petitioner, who was already holding the position of Department Manager of the Legal Services Department of EPZA (with the appropriate ELM eligibility required at that time) had the right to remain in his position even after the same had been declared a CES position in 1994. However, when he retired as such Department Manager in 1996, his government service ended, and his right to remain in the CES position, notwithstanding his lack of CES eligibility, also ceased. Upon his reemployment in January 1999 at Subic Bay Metropolitan Authority as Department Manager III, it was necessary for him to comply with the CES eligibility prescribed at the time for that position. Not being a CES eligible, he could not validly challenge the disapproval of his appointment by the Civil Service Commission.

ib) The mere fact that a position belongs to the Career Executive Service 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 be transferred or reassigned without violating the constitutional guarantee of security of tenure [*DeLeon v. Court of Appeals*, G.R. No. 127182, January 22, 2001].

ii) *Security of tenure in the Career Executive Service.* The two requisites that must concur in order that an employee in the career executive

service may attain security of tenure are [1] career executive service eligibility; and [2] appointment to the appropriate career executive service rank, it must be stressed that the security of tenure of employees in the career executive service (except first and second 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 career executive service officer may be transferred or reassigned from one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a career executive service 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, G.R. Nos. 143366 & 143524, January 29, 2001*].

iia) Thus, in *Cuevas v. Bacal, G.R. No. 139382, December 6, 2000*, respondent Josefina Bacal, who held CES Rank Level III, Salary Grade 28, could not claim that she had a valid and vested right to the position of Chief Public Attorney (CES Rank Level IV, Salary Grade 30). Inasmuch as respondent does not have the rank appropriate for the position of Chief Public Attorney, her appointment to that position cannot be considered permanent, and she can claim no security of tenure in respect to that position.

b) Non-Career Service. Characterized by entrance on bases other than those of the usual tests utilized for the career service; tenure limited to a period specified by law, or which is co-terminus 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 the employment was made. The officers and employees embraced in the non-career service are: (i) Elective officials, and their personal and confidential staff; (ii) Department heads and officials of Cabinet rank who hold office at the pleasure of the President, and their personal and confidential staff; (iii) Chairmen and members of commissions and boards with fixed terms of office, and their personal and confidential staff; (iv) Contractual personnel or those whose employment in 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 not exceeding one year, under their own responsibility, with the minimum direction and supervision; and (v) Emergency and seasonal personnel.ⁱ⁾

i) In *Montecillo v. Civil Service Commission, G.R. No. 131954, June 28, 2001*, the Supreme Court said that under the Administrative Code of 1987, the Civil Service Commission is expressly empowered to declare positions in the Civil Service as primarily confidential. This signifies that the enumeration in the Civil Service decree,

is not an exclusive list. The Commission can supplement this enumeration, as it did when it issued Memorandum Circular No. 22, s. 1991, specifying positions in the Civil Service which are considered primarily confidential and, therefore, their occupants hold tenure co-terminus with the officials they serve.

ji) Under R.A. 7104, the respondent Chairman of the Komisyon ng Wikang Pilipino (KWP) has a fixed tenure of 7 years. Respondent is a noncareer service personnel whose tenure is fixed by law, and thus, her tenure in office is not at the pleasure of the appointing authority. She enjoys security of tenure and may not be removed without just cause and without observing due process [*Office of the President v. Buenaobra*, G.R. No. 170021, September 8, 2006].

5. Appointments in the Civil Service: 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 [Sec. 2(2), Art. IX-B],

a) In *PAGCOR v. Rilloraza*, G.R. No. 141141, June 25, 2001, three important points were underscored, viz: [1] The classification of a particular position as policy-determining, primarily confidential or highly technical amounts to no more than an executive or legislative declaration that is not conclusive upon the courts, the true test being the nature of the position; [2] The exemption provided in this section pertains only to exemption from competitive examination to determine merit and fitness to enter the civil service; and [3] Sec. 16, RD. 1869, insofar as it declares all positions within PAGCOR as primarily confidential, is not absolutely binding on the courts.

b) A permanent appointment can issue only to a person who possesses all the requirements for the position to which he is appointed. An exception to this rule is where, in the absence of appropriate eligibles, he or she may be appointed to the position merely in a temporary capacity for a period of 12 months, unless sooner terminated by the appointing authority. Such a temporary appointment is made not for the benefit of the appointee; rather it seeks to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent appointee. Thus, the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. Such termination of a temporary appointment may be with or without cause as the appointee serves merely at the pleasure of the appointing power. Accordingly, the Court held that where a non-eligible holds a temporary appointment, his replacement by another non-eligible is not prohibited [*Darangina v. Civil Service Commission*, G.R. No. 167472, January 31, 2007].

c) Exempt from the competitive examination requirement [to determine merit and fitness] are positions which are:

i) Policy determining: where the officer lays down principal or fundamental guidelines or rules; or formulates a method of action for government or any of its subdivisions. E.g., department head.

ii) Primarily confidential: 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 on confidential matters of state [*De los Santos v. Mallare*, 87 Phil 289]; or one declared to be so by the President of the Philippines upon recommendation of the Civil Service Commission [*Salazar v. Mathay*, 73 SCRA 285],

iiia) In *Civil Service Commission and PAGCOR v. Salas*, G.R. No. 123708, June 19, 1997, the Supreme Court clarified this, as follows: Prior to the passage of the Civil Service Act of 1959, there were two recognized instances when a position may be considered primarily confidential, namely: (1) when the President, upon recommendation of the Civil Service Commission, has declared the position to be primarily confidential; and (2) in the absence of such a declaration, when from the nature of the functions of the office, there exists close intimacy between the appointee and the appointing authority which insures freedom of intercourse without embarrassment or freedom from misgivings or betrayals on confidential matters of State. When R.A. 2260 was enacted on June 19, 1959, Sec. 5 thereof provided that "the non-competitive or unclassified service shall be composed of positions declared by law to be in the non-competitive or unclassified service or those which are policy-determining, primarily confidential or highly technical in nature". Thus, at least since the enactment of the Civil Service Act of 1959, it is the nature of the position which determines whether a position is primarily confidential, policy-determining or highly technical. In *Pinero v. Hechanova*, 18 SCRA 417, it was declared that executive pronouncements, such as P.D. 1869, can be no more than initial determinations that are not conclusive in case of conflict; otherwise, it would lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the constitutional protection of security of tenure. This rule prevails even with the advent of the 1987 Constitution and the Administrative Code of 1987, despite the fact that the phrase "in nature" was deleted. Furthermore, the "proximity rule" enunciated in *De los Santos v. Mallare*, 87 Phil 289, is still authoritative, i.e., that the occupant of a particular position could 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 or confidential matters of State. 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.

iib) See also *Hilario v. CSC*, 243 SCRA 206, which reiterates previous rulings that the position of City Legal Officer is primarily confidential, and the appointee thereto holds office at the pleasure of, and coterminous with, the appointing authority.

iic) In *PAGCOR v. Rilloraza*, G.R. No. 141141, June 25, 2001, it was held that the respondent's position of Casino Operations Manager (COM) is not primarily confidential. In this case, the duties and responsibilities of respondent, as COM, show that he is a tier above the ordinary rank-and-file employees, and that faith and confidence in his competence to perform his assigned tasks are reposed upon him. However, the degree of confidence of the appointing power, which is that intimacy that insures freedom of intercourse without embarrassment, or freedom from misgivings of betrayal of personal trust or confidential matters of state, is not present. In fact, respondent does not report directly to the appointing authority, but to a Branch Manager.

iii) Highly technical: which requires possession of technical skill or training in a supreme or superior degree. In *Besa v. PNB*, 33 SCRA 330, the position of legal counsel of the PNB was declared to be both primarily confidential and highly technical, with the former aspect predominating. In *Cadiente v. Santos*, 142 SCRA 280, the position of City Legal Officer is primarily confidential, requiring the utmost degree of confidence on the part of the Mayor. In *Borres v. Court of Appeals*, 153 SCRA 120, it was held that the positions of Security Officer and Security Guards of the City Vice Mayor are primarily confidential positions.

c) *Discretion of the appointing authority.* Even in the career service of the Civil Service, where the appointee possesses the minimum qualification requirements prescribed by law for the position, the appointing authority has discretion who to appoint [*Luego v. CSC*, 143 SCRA 327]. The appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. Not only is the appointing authority the officer primarily responsible for the administration of his office, he is also in the best position to determine who among the prospective appointees can effectively discharge the functions of the position. Thus, the final choice of the appointing authority should be respected and left undisturbed [*Civil Service Commission v. De la Cruz*, G.R. No. 158737, August 31, 2004].

i) 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. The Civil Service Commission cannot direct the appointment of its own choice, even on the ground that the latter is more qualified than the appointing authority's choice [*Central Bank v. CSC*, 171 SCRA 744; *Uy v. Court of Appeals*, 286 SCRA 343]. For disregarding this doctrine, the CSC drew a stern rebuke from the Court in *Lapinidv. CSC*, 197 SCRA 106; warned in *Guieb v. CSC*, 229 SCRA 779; and, again "duly warned; henceforth, it disobeys at its peril", in *Mauna v. CSC*, 232 SCRA 388.

ii) 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. In *Province of Camarines Sur v. Court of Appeals*, 246 SCRA 281, the Supreme Court reiterated the rule that the Civil Service Commission cannot convert a temporary appointment into a permanent one, as it would constitute an arrogation of a power properly belonging to the appointing authority. The Civil Service Commission 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.

d) *Role of the Civil Service Commission.* In *Lopez v. CSC*, 194 SCRA 269, the Supreme Court held: "All that the Commission is authorized to do is to check if the appointee possesses the qualifications and appropriate eligibility: 'If he does, his appointment is approved; if not, it is disapproved', x x x Sec. 6 of R. A. 6656 on government reorganization merely provides that the selection or placement should be done through the creation of a Placement Committee the members of which are the representatives of the head of the agency as well as representatives of the employees. The committee's work is recommendatory and does not fix a stringent formula regarding the mode of choosing from among the candidates." In *University of the Philippines and Alfredo de Torres v. Civil Service Commission*, G.R. No. 132860, April 3, 2001, the Supreme Court said that the Civil Service Commission 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.¹⁾

i) A substantive requirement under Sec. 11 of the Omnibus Civil Service Rules and Regulations is that an appointment should be submitted

to the Civil Service Commission within 30 days from issuance; otherwise, it shall be ineffective. In *Oriental Mindoro National College v. Macaraig*, G.R. No. 152017, January 15, 2004, inasmuch as the alleged appointment of the respondent was submitted to the Civil Service Commission only after two years and twelve days after its issuance, there was no valid appointment.

ii) Despite CSC Memorandum Circular 40, s. 1998, which provides that only the appointing authority has the right to challenge the CSC's disapproval of an appointment, the Supreme Court, in *Abella, Jr. v. Civil Service Commission, supra.*, said that both the appointing authority and the appointee are the real parties in interest, and both have legal standing, in a suit assailing a Civil Service Commission (CSC) order disapproving an appointment. The CSC's disapproval of an appointment is a challenge to the appointing authority's discretion: thus, the appointing authority has the right to contest the disapproval, as he stands to be adversely affected when the CSC disapproves an appointment. Although the appointee has no vested right to the position, it was his eligibility that was being questioned. He should, therefore, be granted the opportunity to prove his eligibility. He has a personal stake in the outcome of the case, which justifies his challenge to the CSC act which denied his permanent appointment.

6. Disqualifications:

a) 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 corporation or in any of their subsidiaries [Sec. 6, Art. IX-B].

b) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure [Sec 7(1) Art IX-B].

i) For violating this constitutional prohibition, the Supreme Court, in *Flores v. Drilon, supra.*, declared as unconstitutional the provision in the law creating the Subic Bay Metropolitan Authority which mandated the appointment of the City Mayor of Olongapo City as the first Administrator of the Authority.

c) 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 [Sec 7(2) Art. IX-B],

i) Relate this to Sec. 13, Art. VII, and see *Civil Liberties - Union v. Executive Secretary, supra.*, which declared. Executive Order No. 284 unconstitutional.

ii) In *Public Interest Center v. Elma*, 494 SCRA 53 (2006), the Supreme Court held that an incompatibility exists between the positions of the PCGG Chairman and Chief Presidential Legal Counsel (CPLC). The duties of the CPLC include giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and to review investigations involving heads of executive departments and agencies , as well as other Presidential appointees. The PCGG is, without question, an agency under the Executive Department. Thus, the actions of the PCGG Chairman are subject to the review of the CPLC. Thus, the concurrent appointments of respondent Elma as PCGG Chairman and CPLC violate Sec. 7, Art. IX-B of the Constitution.

iii) Where the other posts are held by a public officer in an exofficio capacity as provided by law or as required by the primary functions of his position, there is no violation, because the other posts do not comprise "any other office" but are properly an imposition of additional duties and functions on the said public officer. However, he is prohibited from receiving any additional compensation for his services in the said position, because these services are deemed already paid for and covered by the compensation attached to his principal office [*National Amnesty Commission v. COA*, G.R. No. 156982, September 8, 2004]. It also follows that a representative designated by the Secretary of Labor (who is ex officio member of the Board of Directors of PEZA) to attend the meetings of the PEZA Board, may not claim any additional compensation for such attendance. Otherwise, the representative would have a better right than his principal [*Bitonio v. Commission on Audit*, G.R. No. 147392, March 12, 2004],

7. *Security of Tenure*. No officer or employee of the civil service shall be removed or suspended except for cause provided by law [Sec. 2(3), Art. IX-B].

a) The grounds and the procedure for investigation of charges and the discipline of [career] civil service officers and employees are provided in the Civil Service Law. Non-compliance therewith constitutes a denial of the right to security of tenure.ⁱ⁾

i) A Presidential appointee is under the direct disciplinary authority of the President [*Villaluz v. Zaldivar*, 15 SCRA 710],

ii) Unconsented transfer of the officer, resulting in demotion in rank or salary, is a violation of the security of tenure clause in the Constitution [*Palma-Fernandez v. de la Paz*, 160 SCRA 751]. But where the appointment of a principal does not refer to any particular school, reassignment does not offend the constitutional guarantee [*DECS v. Court of Appeals*, 183 SCRA 555]. Thus, in *Quisumbing v. Judge Gumban*, 193 SCRA 520, it was held that since the appointment of private respondent Yap was that of District Supervisor at large, she could be assigned to any station as she is not entitled to stay permanently at any specific station.

iii) When an employee is illegally dismissed, and his reinstatement is later ordered by the Court, for all legal 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. Civil Service Commission G.R. No. 112513, August 21, 1997*].

iiia) 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 back wages 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. Secretary, DECS, G.R. No. 138238, September 2, 2003*].

iiib) Thus, in *Brugada v. Secretary of Education*, G.R. Nos. 142332-43, January 31, 2005, where the petitioners were no longer pleading for exoneration from the administrative charges filed against them, but were merely asking for the payment of back wages computed from the time they could not teach pursuant to Secretary Carino's dismissal order minus the six months suspension until their actual reinstatement, the Supreme Court said that the petitioners have no right to back wages because they were neither exonerated nor unjustifiably suspended. In a host of cases, the Supreme Court had categorically declared that the payment of back wages 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.

iv) Security of tenure in the Career Executive Service pertains only to rank, not to the position to which the employee may be appointed [*General v. Roco, supra*.].

b) Valid abolition of office does not violate the constitutional guarantee of security of tenure [*De la Liana v. Alba, supra*.]. However, pretended abolition of office is a flimsy excuse to justify dismissal [*Ginson v. Municipality of Murcia*, 158 SCRA 1; *Rama v. Court of Appeals*, 148 SCRA 496].

i) Reorganization of office does not necessarily result in abolition of the office, and does not justify the replacement of permanent officers and employees. See *Dario v. Mison, supra*; *Mendoza v. Quisumbing*, 186 SCRA 108; *Gabriel v. Domingo*, 189 SCRA 172. But where, as a result of the reorganization, employees were effectively demoted by their assignment to positions lower than those they previously held, there is violation of security of tenure, and the Civil Service Commission may order their reinstatement [*Cabagnot v. CSC*, 223 SCRA 59].

c) Under the Rules of Court, a career service officer or employee who has been unlawfully ousted from his office has one year within which to file an action in court to recover his office, otherwise the right to recover the same prescribes. But see *Cristobal v. Melchor*, 78 SCRA 175, where the Supreme Court, on grounds of equity, allowed a suit filed nine years from date of unlawful dismissal.

d) Sec. 40 of the Civil Service Law provides for summary dismissal [when the charge is serious and evidence of guilt is strong; when respondent is a recidivist or has been repeatedly charged, and there is reasonable ground to believe that he is guilty of the present charge; and when respondent is notoriously undesirable], and is reproduced verbatim in the Revised Administrative Code of 1987 [which took effect in 1989]. However, this provision is deemed repealed by Republic Act 6654, approved on May 20, 1988, and published in the Official Gazette on May 30, 1988 [*Abalos v. CSC*, 196 SCRA 81],

e) Sec. 37, par. a, RD. 807, as amended, provides for appellate jurisdiction of the Civil Service Commission only over the Merit System Protection Board's decisions in administrative disciplinary cases involving the imposition of the penalty of suspension, fine, demotion in rank or salary, transfer, removal or dismissal from office — not over MSPB decisions exonerating the respondent [*Mendez v. CSC*, 204 SCRA 965; *Navarro v. CSC*, 226 SCRA 522]. Appeal to the Civil Service Commission may be made only by the party adversely affected by the MSPB decision; and the employer is not a party adversely affected [University of the Philippines v. CSC, 228 SCRA 207; *Del Castillo v. CSC*, 241 SCRA 317],¹⁾

i) However, the principle laid down in these decisions in *Mendez, Magpale, Navarro, and Del Castillo*, that the Civil Service Law does not contemplate a review of decisions exonerating officers or employees from administrative charges was abandoned in *Civil Service Commission v. Dacoycoy*, G.R. No. 135805, April 29, 1999. The Supreme Court considered the factual situation in the case at bench: The CSC found Dacoycoy guilty of nepotism and imposed the penalty of dismissal from the

as the party adversely affected by the CSC decision, could go to the Court of Appeals for the review of the CSC decision, impleading the CSC as public respondent, being the government agency tasked with the duty to enforce the constitutional and statutory provisions on the civil service. Subsequently, the Court of Appeals reversed the decision of the CSC, and held Dacoycoy not guilty of nepotism. At that point, the Civil Service Commission had become "the party adversely affected" by such a CA ruling which seriously prejudices the civil service system. Accordingly, as an aggrieved party, the Civil Service Commission may appeal the decision of the Court of Appeals to the Supreme Court. This was reiterated in Philippine National Bank v. Garcia, G.R. No. 141246, September 9, 2002, where the employer PNB was allowed to elevate on appeal the decision of the Civil Service Commission exonerating the employee.

f) ' It is a well-settled rule that he who, while occupying one office, accepts another incompatible with the first, ipso facto vacates the first office and his title thereto is thereby terminated without any other act of proceeding. However, in *Canonizado v. Aguirre*, G.R. No. 133132, February 15, 2001, this rule on incompatibility was not applied. In this case, the Supreme Court declared Sec. 8, RA 8551. unconstitutional, for violating the security of tenure clause in the Constitution. It appears that petitioners were removed as NAPOLCOM Commissioners by virtue of the law; thus Canonizado's acceptance of the position of Inspector General during the pendency of this case (precisely to assail the constitutionality of his removal as Commissioner) cannot be deemed to be abandonment of his claim for reinstatement to the position of Commissioner. The removal of the petitioners from their positions by virtue of a constitutionally infirm act necessarily negates a finding of voluntary relinquishment.

g) For other cases, procedure in disciplinary cases, appeal, etc., see VIII - Termination of Official Relationship, LAW ON PUBLIC OFFICERS, infra.

8. *Partisan Political Activity.* No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign [Sec. 2(4), Art. IX-B],

a) The Civil Service Law prohibits engaging directly or indirectly in any partisan political activity or taking part in any election except to vote, or to use official authority or influence to coerce the political activity of any person or body. But this does not prevent expression of views on current political problems or issues, or mention of the names of candidates for public office whom the public officer supports.

b) The military establishment is covered by this provision. Sec. 5(3), Art. XVI, 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].

c) Exempt from this provision are members of the Cabinet [*Santos v. Yatco*, 106 Phil 745], and 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) [Sec. 45, Civil Service Law],

9. *Right to Self-Organization.* The right to self-organization shall not be denied to government employees [Sec. 2(5), Art. IX-B]. See also Sec. 8, Art.

a) But while the right to organize and join unions, associations or societies cannot be curtailed, government employees may not engage in strikes to demand changes in the terms and conditions of employment because the terms and conditions of employment are provided by law. See *Alliance of Concerned Teachers v. Carino*, 200 SCRA 323; *Manila Public School Teachers Association (MPSTA) v. Laguio*, G.R. No. 95445, December 18, 1990; *SSS Employees Association v. Court of Appeals*, 175 SCRA 686; *Alliance of Government Workers v. MOLE*, 124 SCRA 1. The ability to strike is not essential to the right of association x x x the right of the sovereign to prohibit strikes or work stoppages by public employees is clearly recognized at common law; thus, it has been frequently declared that modern rules which prohibit strikes, either by statute or judicial decision, simply incorporate or reassert the common law rules [*Bangalisan v. Court of Appeals*, G.R. No. 124678, July 23, 1997; *Jacinto v. Court of Appeals*, G.R. No. 124540, November 17, 1997].

10. *Protection to Temporary Employees.* "Temporary employees of the Government shall be given such protection as may be provided by law" [Sec. 2(6), Art. IX-B].

11. *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" [Sec. 5, Art. IX-B]. See R.A. 6758 [An Act Prescribing a Revised Compensation and Classification System in the Government].

a) Thus, in *Intia il. Commission on Audit*, G.R. No. 131529, April 30, 1999, it was held that the discretion of the Philippine Postal Corporation Board of Directors on matters of personnel compensation is not absolute; the salary structure of its personnel must still strictly conform with RA 6758, in relation to the General Appropriation Act.

b) Challenged in *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, as a violation of the equal protection clause is the provision in R.A. 7693 (The Central Bank Act) which creates two classes of employees in the BSP, viz: (1) the BSP officers or those exempted from the coverage of the Salary Standardization Law (SSL) (the exempt class); and (2) the rank-and-file (Salary Grade 19 and below) (non-exempt class). The Supreme Court said that while the "policy determination" argument may support the inequality of treatment between the rank-and-file and the officers of BSP, it cannot justify the inequality of treatment between the BSP rank-and-file employees and those of other Government Financing Institutions (GFIs) (who, in their respective charters, are exempt from the provisions of SSL). These rank-and-file employees (of BSP and GFIs) are similarly situated; thus, the classification made in the Central Bank Act is not based on any substantial distinction vis-a-vis the particular circumstances of each GFI.

12. *Double 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 Congress, any present, emoluments, office or title of any kind from any foreign government. Pensions and gratuities shall not be considered as additional, double or indirect compensation" [Sec. 8, Art. IX-B].

a) In *Santos v. Court of Appeals*, G.R. No. 139792, November 22, 2000, the Supreme Court declared that the second sentence simply means that the retiree can continue to receive such pension or gratuity even after he accepts another government position to which another compensation is attached. But he cannot credit his years of service in the Judiciary (for which he now receives his pension under RA 910) in the computation of the separation pay to which he may be entitled under RA 7924 for the termination of his last employment. To allow this would be countenance double compensation for exactly the same service.

13. *Oath of Allegiance*. "All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution" [Sec. 14, Art. IX-B], Relate this to Sec. 18, Art. XI, which provides that public officers and employees owe the State and this Constitution allegiance at all times.

C. The Commission on Elections.

1. Composition; En Banc and Division Cases.

a) Composition: A Chairman and six [6] Commissioners who shall be natural born Filipino citizens, at least 35 years of age, holders of a college degree, and have not been candidates in the immediately preceding election. Majority, including the Chairman, must be members of the Philippine Bar who have been engaged in the practice of law for at least ten (10) years. [*Sec. 1, Art. IX-C*]. They shall be appointed by the President with the consent of the Commission on Appointments for a term of seven [7] years without reappointment. No member shall be appointed or designated in a temporary or acting capacity. See *Brillantes v. Yorac, supra.*

i) In *Cayetano v. Monsod*, G.R. No. 100113, September 3, 1991, the Supreme Court ruled that, taking into consideration the liberal interpretation intended by the framers of the Constitution, Atty. Monsod's past work experiences as a lawyer-economist, a lawyer-manager, a lawyer-entrepreneur of industry, a lawyer-negotiator of contracts, and a lawyer-legislator of both the rich and the poor — verily more than satisfy the constitutional requirement — that he has been engaged in the practice of law for at least ten years.

b) En banc and division cases. "It 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 en banc" [Sec. 3, Art. IX-C],

i) Cases which must first be heard and decided in division.

ia) All election cases, including pre-proclamation contests, originally cognizable by the Commission in the exercise of its powers under Sec. 2 (2), Art. IX-C of the Constitution. Thus, in *Sarmiento v. Comelec*, 212 SCRA 307, the Supreme Court set aside the resolutions of the Comelec in this and several companion cases, because the Comelec en banc took original cognizance of the cases without referring them first to the appropriate Division.

ib) Jurisdiction over a petition to cancel a certificate of candidacy rests with the Comelec in division, not the Comelec en banc [*Garvida v. Sales*, G.R. No. 122872, September 10, 1997, reiterated in *Bautista v. Comelec*, G.R. Nos. 154796-97, October 23, 2003],

ic) Even cases appealed from the Regional Trial Court or the Municipal Trial Court have to be heard and decided in Division before they may be heard en banc upon the filing of a motion for reconsideration of the Division decision. And, although not raised as an issue, the Supreme Court may *motu proprio* consider and resolve this question of jurisdiction [*Abad v. Comelec*, G.R. No. 128877, December 10, 1999],

id) A petition for certiorari filed with the Commission from a decision of the RTC (or MTC) is likewise to be resolved in Division before the same may be heard en banc [*Sollerv. Comelec*, G.R No. 139853, September 5, 2000]. Thus, in *Zarate v. Comelec*, G.R. No. 129096, November 19, 1999, where the appeal from the decision of the MTC in an election case involving the SK Chairman of Barangay lean, Malasigui, Pangasinan, was directly taken cognizance of by the Comelec en banc, the Supreme Court set aside the Comelec decision because the appeal should have been referred first to the appropriate Division.

ii) Exceptions.

iia) A petition for the correction of manifest errors alleges an erroneous copying of figures from the election return to the Statement of Votes by precinct. Such an error in the tabulation of results, which merely requires a clerical correction without opening the ballot boxes or examining the ballots, demands only the exercise of the administrative power of the Comelec. Hence, the Comelec en banc may properly assume jurisdiction [*Jaramilla v. Comelec*, G.R. No. 155717, October 23, 2003]. In *Torres v. Comelec*, 270 SCRA 583, and in *Ramirez v. Comelec*, 270 SCRA 590, the Supreme Court held that the 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. While it is settled that election cases, including pre-proclamation contests, must first be heard and decided by the Comelec in division — and a petition for correction of manifest errors in the Statement of Votes is a preproclamation controversy — Sec. 5, Rule 27 of the 1993 Rules of the Comelec expressly provides that pre-proclamation controversies involving correction of manifest errors in the tabulation or tallying of results may be filed directly with the Comelec en banc. The 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 the Board of Canvassers. This ruling was reiterated in *Mastura v. Comelec*, 285 SCRA 493.

iiib) 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 Comelec en banc [*Baytan v. Comelec*, G.R. No. 153945], February 4, 2003].

iii) Thus, 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*, G.R. No. 150946, October 23, 2003; *Jaramilla v. Comelec*, G.R. No. 155717, October 23, 2003; *Canicosa v. Comelec*, G.R. No. 120318, December 5, 1997].

iv) Comelec decisions reviewable by the Supreme Court.

iva) Only decisions of the Comelec en banc may be brought to the Supreme Court on certiorari (as a special civil action under Rule 65 of the Rules of Court). In *Reyes v. RTC of Oriental Mindoro*, 244 SCRA 41, it was held that the failure of the petitioner to file a Motion for Reconsideration from the decision of the Comelec First Division is fatal to the petition filed with the Supreme Court.

ivb) Only decisions of the Comelec made in the exercise of its adjudicatory or quasi-judicial power may be brought to the Supreme Court on certiorari. Thus, in *Garces v. Court of Appeals*, 259 SCRA 99, where what was assailed in the petition for certiorari was the Comelec choice of an appointee, which is a purely administrative duty, the case is cognizable by the Regional Trial Court (or the Civil Service Commission, as the case may be). Indeed,, determinations made by the Comelec which are merely administrative (not quasi-judicial) in character, may be challenged in an ordinary civil action before trial courts [*Filipinas Engineering & Machine Shop v. Ferrer*, 135 SCRA 25].

c) The Comelec en banc shall promulgate rules concerning pleadings and practice before it or before any of its offices, but they must not diminish, increase or modify substantive rights [Sec. 6, Art. IX-A],

i) This power is subject to Sec. 5 (5), Art. VIII, which provides that rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

ii) Procedural rules in election cases are designed to achieve not only a correct but also an expeditious determination of the popular will of the electorate. The nature of an election case differs from an ordinary civil

action. Because of this difference, the Rules on Civil Procedure on demurrer to evidence cannot apply to election cases, even by analogy or in a suppletory character, especially because the application of the Rules would not be practicable and convenient.

iii) The Comelec has the authority to suspend the reglementary periods provided by its rules, or the requirement of certificate of non-forum shopping, in the interest of justice and speedy resolution of cases. The Comelec is likewise not constrained to dismiss a case before it by reason of non-payment of filing fees [*Jaramilla v. Comelec, G.R. No. 155717, October 23, 2003; Barot v. Comelec, G.R. No. 149147, June 18, 2003*],

iv) In *Peñaflorida v: Comelec*, 206 SCRA 754, it was held that the fingerprinting of the Chairman and members of the Board of Election Inspectors is an internal matter, and may be done even without prior notice to the parties.

2. Constitutional powers and functions [Sec. 2, Art. IX-C],

a) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum or recall.

i) Definitions:

ia) "Initiative" is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. There are three systems of initiative, namely: Initiative on the Constitution which refers to a petition proposing amendments to the Constitution; Initiative on statutes which refers to a petition proposing to enact a national legislation; and Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance [Sec. 2(a), R.A. 6735].

ib) "Referendum" is the power of the electorate to approve or reject legislation through an election called for the purpose. It may be of two classes, namely: Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies [Sec 2c, R.A. 6735].

ic) "Recall" is the termination of official relationship of a local elective official for loss of confidence prior to the expiration of his term through the will of the electorate.

id) "Plebiscite" is the submission of constitutional amendments or important legislative measures to the people for ratification.

ii) Broad powers. The 1987 Constitution has granted the Commission on Elections broader powers than its predecessors. It implicitly grants the Commission the power to promulgate rules and regulations in the enforcement of laws relative to elections. Accordingly, where the subject of the action is the enforcement of provisions of the Omnibus Election Code, the case is within the exclusive jurisdiction of the Comelec, not of the regular courts [*Gallardo v. Judge Tabamo*, 218 SCRA 253],

iia) This power includes the "the ascertainment of the identity of a political party and its legitimate officers" [*Laban ng Demokratikong Pilipino v. Comelec*, G.R. No. 161265, February 24, 2004], Citing *Kalaw v. Comelec*, G.R. No. 80218, November 5, 1987, the Supreme Court said that the power to enforce and administer all laws relative to the conduct of elections, decide all questions affecting elections, register and regulate political parties, and ensure orderly elections, include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts and the resolution of such controversies as the one now before it where one party appears to be divided into two wings under separate leaders each claiming to be the president of the entire party. The Comelec erred in resolving the controversy by granting official candidate status to LDP candidates under 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 and in all external affairs and concerns, and to sign documents for and in its behalf.

iib) But this broad administrative power to enforce and administer all laws and regulations relative to the conduct of the elections does not authorize the Comelec, motu proprio, without the proper proceedings, to deny due course to or cancel a certificate of candidacy filed in due form [*Cipriano v. Commission on Elections*, G.R. No. 158830, August 10, 2004].

iic) The power of direct control and supervision of the Department of Interior and Local Government (DILG) over Sangguniang Kabataan (SK) elections does not contravene the constitutional grant of powers to the Comelec [*Alunan III v. Mirasol*, G.R. No. 122250 & 122258, July 21, 1997], inasmuch as the election, and contests involving election, of SK officials do not fall within the jurisdiction of the Comelec. Thus, it was within the authority of the DILG Secretary to exempt a local government unit from holding SK elections.

iid) Consistent with these broad powers, the Comelec has the authority to annul the results of a plebiscite. Obviously, the power of the Comelec is not limited to the mere administrative function of conducting the plebiscite. The law is clear; it is also mandated to enforce the laws relative to the conduct of the plebiscite. Hence, the Comelec, whenever it is called upon to correct or check what the Board of Canvassers erroneously or fraudulently did during the canvassing, can verify or ascertain the true results of the plebiscite either through a proclamation case or through revision of ballots. To remove from the Comelec the power to ascertain the true results of the plebiscite through revision of ballots is to render nugatory its constitutionally mandated power to enforce laws relative to the conduct of a plebiscite [*Buac' v. Comelec, G.R. No. 155855, January 26, 2004*],

iii) Regulatory power over media of transportation, communication and information. During the election period, the Comelec may regulate enjoyment or utilization of all franchises and permits for the operation of transportation and other public utilities, media of communication or information, grants, special privileges, concessions — to ensure equal opportunity, time, space, right to reply, etc. — with the objective of holding free, orderly, honest, peaceful and credible elections [Sec. 4, Art. IX-C]. See *National Press Club v. Comelec, 207 SCRA 1; Adiong v. Comelec, 207 SCRA 712; Unido v. Comelec, 104SCRA 17.*

iiia) On the basis, among others, of this constitutional authority, the Supreme Court, in *Chavez v. Comelec, G.R. No. 162777, August 31, 2004*, upheld the validity of Sec. 32, Resolution No. 6520, dated January 6, 2004, 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, print media or television station shall be presumed to have conducted premature campaigning in violation of Sec. 80 of the Omnibus Election Code. The issuance of the resolution was, likewise, considered as a valid exercise of the police power.

iiib) But in *Philippine Press Institute v. Comelec 244 SCRA 272*, the Supreme Court 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. In *Social Weather Stations v. Comelec, G.R. No. 147571, May 5, 2001*, the Supreme Court declared as unconstitutional Sec. 5.4 of R.A. 9005 prohibiting publication of election survey results, among others, because the grant of authority to

the Comelec to regulate the enjoyment and utilization of franchises for the operation of media of communications is limited to ensuring “equal opportunity, time, space and the right to reply”, as well as uniform and reasonable rates of charges for the use of such media facilities for “public information campaigns for and among candidates”.

iiic) In *Sanidad v. Comelec*, 181 SCRA 529, the Supreme Court held that this power may be exercised only over the media, not over practitioners of the media. Thus, in this case, the Supreme Court 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 Cordillera Autonomous Region.

iv) No pardon, amnesty, parole, etc., for violation of election laws shall be granted by the President without its favorable recommendation [Sec. 5, Art. IX-C],

v) Comelec cannot exercise the power of apportionment. While Sec. 2 of the Ordinance appended to the 1987 Constitution empowered the Comelec to “make minor adjustments of the reapportionment made herein”, the Ordinance did not vest in it the authority to transfer municipalities from one legislative district to another. And while the Ordinance grants Comelec the power to adjust the number of members (not municipalities) “apportioned to the province out of which a new province was created”, the Comelec committed grave abuse of discretion when, in its Resolution No. 2736, it transferred the Municipality of Capoocan in the 2nd District and the Municipality of Palompon in the 4th District to the 3rd District of Leyte. The Comelec is without authority to reapportion the congressional districts, as only Congress is vested with such power [*Montejo v. Comelec*, 242 SCRA 415],

vi) For violating the constitutional mandate of independence of the Comelec, Secs. 17.1, 19 and 25 of R.A. 9189 (Overseas Absentee Voting Act of 2003), insofar as they relate to the creation of the Joint Congressional Oversight Committee, and the grant to it of the power to review, revise, amend and approve the Implementing Rules and Regulations promulgated by the Comelec, were declared unconstitutional [*Makalintal v. Comelec*, G.R. No. 157013, July 10, 2003].

vii) Power to declare failure of election. In *Joseph Peter Sison v. Comelec*, G.R. No. 134096, March 3, 1999, the Supreme Court said that under pertinent provisions of B.P. 881, there are only three instances where a failure of elections may be declared, namely: [a] the election in any polling place

has not been held on the date fixed on account of force majeure, violence, terrorism, fraud or other analogous causes; [b] 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 causes; or [c] 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. This was reiterated in *Pasandalan v. Comelec*, G.R. No. 150312, July 18, 2002.

viia) In *Mitmug v. Comelec*, 230 SCRA 54, the Supreme Court held that for the 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: (a) 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 (b) the votes not cast would affect the results of the election. 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. See Statutory powers of Comelec, infra..

viib) In *Soliva v. Comelec*, G.R. No. 141723, April 20, 2001, applying the foregoing criteria, the Supreme Court upheld the Comelec resolution that there was failure of election in the Municipality of Remedios T. Romualdez, Agusan del Norte in the local elections of May 11, 1998, on the basis of the finding that the counting of votes and the canvassing of election returns were clearly attended by fraud, intimidation, terrorism and harassment. The counting of the votes was transferred from the polling places to the multi-purpose gymnasium without the knowledge and permission of private respondents or their representatives, and the canvassing of election returns was done without the latter's presence. The transfer was made without authority of the Comelec as required by law, and was not even recorded by the BEI.

viii) In *Akbayan Youth v. Comelec*, G.R. No. 147066, March 26, 2001, the Court upheld the resolution of the Comelec denying the petitioners' request for special registration of voters in the youth sector who failed to register before the deadline set by the Comelec under R.A. 8189. The Supreme Court noted that respondent Comelec acted within the bounds and confines of the applicable law on the matter and simply performed its constitutional task to enforce and administer all laws and regulations relative to the conduct of an election.

viii) But the Comelec is not authorized to make an unofficial quick count of presidential election results. The assailed resolution usurps, in the

guise of an "unofficial" tabulation of election results based on a copy of the election returns, the sole and exclusive authority of Congress to canvass the votes for the election of the President and Vice President [*Brillantes v. Comelec*, G.R. No. 163193, June 15, 2004],

b) Exclusive original jurisdiction over all contests relating to the election, returns and qualifications of all elective regional, provincial and city officials. Exclusive appellate jurisdiction over all contests involving elective municipal officials decided by the RTC or involving elective barangay officials decided by the MTC. and decisions therein shall be final, executory and unappealable.

i) Exclusive jurisdiction over pre-proclamation cases. The Comelec shall have exclusive jurisdiction over pre-proclamation controversies [Sec. 242, BP 881]. The possibility of a conflict of jurisdiction between the Comelec and the House of Representatives [or Senate] Electoral Tribunal regarding contests involving congressional elections has been foreclosed by Sec. 15, R.A. 7166, which prohibits pre-proclamation controversies in national offices (except on questions involving the composition and proceedings of the Board of Canvassers). No further conflict is anticipated with the decision of the Supreme Court in *Aquino v. Comelec*, 248 SCRA 400, when it said that the jurisdiction of the Electoral Tribunal is exercised over the members of the House or Senate, and a party to the election controversy is a member of the House or the Senate only after he has been proclaimed, has taken his oath and has assumed the functions of the office. This is reiterated in *Vinzons-Chato v. Comelec*.

ii) Broad scope of powers; limitation. In making the Comelec the sole judge of all contests, the Constitution intended to give it full authority to hear and decide those cases from beginning to end, and on all matters related thereto, including those arising before the proclamation of the winners [*Javier v. Comelec*, 144 SCRA 194]. But the Comelec is without the power to partially or totally annul a proclamation or to suspend the effects of a proclamation without notice and hearing, as this would constitute a violation of the due process clause [*Bince v. Comelec*, 218 SCRA 782].

iii) Power to issue writs of certiorari, prohibition, etc.. In the exercise of its exclusive appellate jurisdiction, the Comelec has the power to issue writs of prohibition, mandamus and certiorari, because the last part of Sec. 50, B.P. 697, remains in full force and effect, and had not been repealed by B.P. 881 (Omnibus Election Code). Thus, the ruling in *Veloria v. Comelec*, 211 SCRA 907 and *Garcia v. de Jesus*, 206 SCRA 779, is now abandoned [*Relampagos v. Cumba*, 243 SCRA 690; *Edding v. Comelec*, 246 SCRA 502],

iiia) But see *Acosta v. Comelec*, 290 SCRA 578, where the Supreme Court said that the Comelec exceeded its authority when it affirmed the decision of the Municipal Trial Court declaring respondent the winner, even as the pending petition for certiorari and prohibition filed by the petitioner with the Comelec merely questioned the order of the MTC denying petitioner's motion for extension of time to file his answer to the election protest filed by the respondent in the MTC.

iv) Exclusive appellate jurisdiction. R.A. 6679, insofar as it grants appellate jurisdiction to the RTC over decisions of Municipal Trial Courts and/or Metropolitan Trial Courts in electoral cases involving elective barangay officials, is unconstitutional [*Flores v. Comelec*, 184 SCRA 484; reiterated in *Guieb v. Fontanilla*, 247 SCRA 48, and in *Calucag v. Comelec*, 274 SCRA 405],

iva) Appeal to the Comelec from the Regional Trial Court must be filed within five 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, supra.*].

ivb) Under the 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. Thus, in *Rodillas v. Comelec*, 245 SCRA 702, it was held that the payment of the full amount of docket fee is an indispensable step for the perfection of an appeal to the Comelec. Payment of the same to the RTC produces no valid effect because the RTC is without appellate jurisdiction over the case. However, in *Sunga v. Comelec*, 288 SCRA 76, the Supreme Court called attention to the fact that Sec. 8, Rule 42 of the Comelec Rules of Procedure, provides that if the docket fee is not paid, the Comelec may refuse to take action on the petition for disqualification until the docket fee is paid or may dismiss the case. The use of the word "may" indicates that the provision is merely permissive, and if the Comelec gives due course to the petition, the subsequent payment of the docket fee could cure the procedural defect.

ivc) Be that as it may, in *Jaramilla v. Comelec*, G.R. No. 155717, October 23, 2003, it was held that the Comelec has the authority to suspend the reglementary periods provided by its rules, or the requirement of non-forum shopping, in the interest of justice and speedy resolution of cases. The Comelec is likewise not constrained to dismiss a case before it by reason of non-payment of filing fees.

v) Execution pending appeal. The Comelec cannot deprive the Regional Trial Court of its competence to order execution of judgment pending appeal, because the mere filing of an appeal does not divest the trial court

of its jurisdiction over a case and the authority to resolve pending incidents. Since the court had jurisdiction to act on the motion (for execution pending appeal) at the time it was filed, that jurisdiction continued until the matter was resolved, and was not lost by the subsequent action of the opposing party [*Edding v. Comelec*, 246 SCRA 502],

va) The rationale why such execution is allowed in election cases, as stated in *Gophol v. Riodique*, is “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” [*Uy v. Comelec*, cited in *Santos v. Comelec*, G.R. No. 155618, March 26, 2003].

vb) In *Navarosa v. Comelec*, G.R. No. 157957, September 18, 2003, it was held that the 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 involved or the Will of the electorate; (2) the shortness of the remaining portion of the term; or (3) the length of time that the election contest has been pending. Thus, in *Gutierrez v. Comelec*, 270 SCRA 413, the Supreme Court ruled that the fact that only a short period is left of the term of office is a good ground for execution pending appeal. This was reiterated in *Ramas v. Comelec*, 286 SCRA 189.

vc) However, in *Camlian v. Comelec*, 271 SCRA 757, it was held that the provision which allows execution pending appeal must be strictly construed against the movant, as it is an exception to the general rule. Following civil law jurisprudence, the reasons allowing for immediate execution must be of such urgency as to outweigh the injury or damage of the losing party should such party secure a reversal of the judgment on appeal. Absent such, the order must be stricken down as flawed with grave abuse of discretion. Not every invocation of public interest with particular reference to the will of the electorate can be appreciated as a good reason, especially so if the same appears to be self-serving and has not been clearly established. Public interest will be best served only when the candidate voted for the position is finally proclaimed and adjudged winner in the election.

vd) Note that the motion for execution pending appeal should be filed before the expiration of the period for appeal [*Relampagos v. Cumba*, 243 SCRA 690]. Thus, in *Asmala v. Comelec*, 289 SCRA 746, the Supreme Court said that the parties had five days from service of judgment within

which to appeal, and although the respondent had filed his appeal on time, the appeal was deemed perfected as to him only. This did not deprive the petitioner of the right to avail himself of the five-day period to appeal, if he so desired. Accordingly, during this five-day period, petitioner may file a motion for execution pending appeal. This is reiterated in *Zacate v. Comelec*, G.R. No. 144678, March 1, 2001.

ve) Judgments which may be executed pending appeal need not only be those rendered by the trial court, but by the Comelec as well [*Balajonda v. Comelec*, G.R. No. 166032, February 28, 2005, citing *Batul v. Bayron*, G.R. Nos. 157587 & 158959, February 26, 2004].

vi) Power to cite for contempt. The Comelec has the statutory power to cite for contempt, but the power may be exercised only while the Comelec is engaged in the performance of quasi-judicial functions [*Guevara v. Comelec*, 104 Phil 269].

vii) Power of Supreme Court to review appellate decisions of the Comelec. The fact that decisions, final orders or rulings of the Comelec in contests involving elective municipal and barangay officials are final, executory and not appealable, does not preclude a recourse to the Supreme Court by way of a special civil action for certiorari [*Galido v. Comelec*, 193 SCRA 78]. However, the power of the Supreme Court to review decisions of the Comelec involves only final orders, rulings and decisions of the Comelec en banc rendered in the exercise of its adjudicatory or quasi-judicial powers. This decision must be a final decision or resolution of the Comelec en banc, not of a division, and certainly not an interlocutory order of a division [*Ambil v. Comelec*, G.R. No. 143398, October 25, 2000].

c) Decide, save 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.

i) In *Cawasa v. Comelec*, G.R. No. 150469, July 3, 2002, it was held that 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 notice and hearing.

ia) In the same case, the Supreme Court likewise characterized as a grave electoral irregularity the appointment of military personnel as members of the BEI. There is no legal basis for the replacement of the duly constituted members of the BEI who were public school teachers. If there are

not enough public school teachers, teachers in private schools, employees in the civil service, or other citizens of known probity and competence may be appointed.

ii) 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. In this regard, read also appropriate chapter in Election Laws relative to inclusion and exclusion proceedings.

iii) When exercising its purely administrative powers under this paragraph, the Comelec may not punish contempt [Guevara v. Comelec, 104 Phil 269],

iv) Decisions/determinations made by Comelec in the exercise of this power, being merely administrative (not quasi-judicial) in character, may be questioned in an ordinary civil action before trial courts [*Filipinas Engineering & Machine Shop v. Ferrer*, 135 SCRA 25; *Garces v. Court of Appeals*, 259 SCRA 99]. Thus, the case questioning the validity of Comelec Resolution No. 2987, providing for the rules to govern the conduct of the plebiscite relative to the ordinance abolishing a barangay — being merely an incident of the Comelec's inherent administrative functions over the conduct of plebiscites — may be taken cognizance of by the Regional Trial Court [*Salva v. Makalintal*, G.R. No. 132603, September 18, 2000],

d) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities for the exclusive purpose of ensuring free, orderly, honest, peaceful and credible elections.ⁱ⁾

i) May recommend to the President the removal of any officer it has deputized, or the imposition of any other sanction, for disobedience, violation or disregard of its orders [Sec. 2(8), Art. IX-C]. In *Tan v. Comelec*, 237 SCRA 353, the Court said that the authority of the Comelec is virtually all-encompassing when it comes to election matters. The administrative case against the petitioner, taken cognizance of by the Comelec, is in relation to the performance of his duties as election canvasser and not as City Prosecutor. In order to ensure that such duly deputized officials and employees of the government carry out their assigned tasks, the law also provides that upon Comelec's recommendation, the corresponding proper authority shall take appropriate action, either to suspend or remove from office the officer or employee who may, after due process, be found guilty of violation of election laws. It is the Comelec, being in the best position to assess how its deputized officials and employees perform, that should conduct the administrative inquiry. To

jurisdiction would be to unduly deny to it the proper and sound exercise of its recommendatory power.

e) Register, after sufficient publication, political parties, organizations or coalitions which must present their platform or program of government: accredit citizens' arms.

i) A political party refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office. It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region. A sectoral party refers to an organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals, whose principal advocacy pertains to the special interest and concerns of their sector. A sectoral organization refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns. A coalition refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes [*R.A. 7941: The Party List System Act*].

ii) Groups which cannot be registered as political parties: [a] religious denominations or sects; [b] those who seek to achieve their goals through violence or unlawful means; [c] those who refuse to uphold and adhere to the Constitution; and [d] those supported by foreign governments [*Sec. 2(5), Art. IX-C*].

iii) Grounds for cancellation of registration: Accepting financial contributions from foreign governments or their agencies [*Sec. 2(5), Art. IX-C*]. Under R.A. 7941, Comelec may, motu proprio 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: [a] it is a religious sect or denomination, organization or association organized for religious purposes; [b] it advocates violence or unlawful means to seek its goal; [c] it is a foreign party or organization; [d] 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; [e]

it violates or fails to comply with laws, rules or regulations relating to elections; [f] it declares untruthful statements in its petition; [g] it has ceased to exist for at least one year; and [h] 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.

iv) Read R.A. 8173 (An Act Granting All Citizens' Arms Equal Opportunity to be Accredited by the Commission on Elections).

v) In *Laban ng Demokratikong Pilipino v. Comelec*, *supra*., the Supreme Court annulled the Comelec resolution dividing the LDP into "wings", each of which may nominate candidates for every elective position and be entitled to representation in the election committees that the Comelec may create. Citing *Recabo, Jr. v. Comelec*, G.R. No. 134293, June 21, 1999, 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.

vi) In *AKLAT v. Comelec*, G.R. No. 162203, April 14, 2004, the Supreme Court declared that the authority of the Comelec to promulgate the necessary rules and regulations to enforce and administer all election laws includes the determination, with the parameters fixed by law, of appropriate periods for the accomplishment of pre-election acts like filing petitions for registration under the party-list system.

via) In the same case, the Supreme Court also upheld the action of the Comelec in denying the registration of AKLAT, for failure to comply with the eight guidelines laid down by the Court in *Ang Bagong Bayani - OFW Labor Party v. Comelec*, G.R. No. 147589, June 26, 2001, which are: [1] The political party, sectoral organization or coalition must represent a marginalized or underrepresented sector or group identified in Sec. 5, RA 7941; [2] Major political parties must comply with the declared statutory policy of enabling Filipino citizens belonging to marginalized and underrepresented sectors to be elected to the House of Representatives; [3] The religious sector may not be represented in the party-list system; [4] A party or organization must not be disqualified under Sec. 6, RA 7941; [5] The party must not be an adjunct or, or a project organized, or an entity funded or assisted by the Government; [6] The party must not only comply with the requirements of the law, its nominees must likewise do so; [7] The party's nominees must also represent marginalized

and underrepresented sectors; and [8] While lacking a well-defined political constituency, the nominee must also be able to contribute to the formulation and enactment of appropriate legislation which will benefit the nation as a whole.

f) File, upon a verified complaint, or on its own initiative, petitions in court for the inclusion or exclusion of voters: investigate and, where appropriate, prosecute cases of violations of election laws.

i) The Comelec has exclusive jurisdiction to investigate and prosecute cases for violations of election laws [*De Jesus v. People*, 120 SCRA 760; *Corpus v. Tanodbayan*, 149 SCRA 281]. Thus, the trial court was in error when it dismissed an information filed by the Election Supervisor of Dumaguete City because the latter failed to comply with the order of the court to secure the concurrence/approval of the Provincial Fiscal (Prosecutor) in the filing of the information. Indeed, such concurrence is not necessary nor required [*People v. Judge Inting*, 187 SCRA 788]. However, the Comelec may validly delegate this power to the Provincial Fiscal [Prosecutor], as it did when it issued Resolution No. 1862, dated March 2, 1987 [*People v. Judge Basilia*, 179 SCRA 87].

ii) 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*, G.R. No. 153945, February 4, 2003],

iii) This power includes the authority to decide whether or not to appeal the dismissal of a criminal case by the trial court. The Chief State Prosecutor — who may have been designated by the Comelec to prosecute a criminal action — merely derives his authority from the Comelec. It is beyond his power to oppose the appeal made by the Comelec [*Comelec v. Silva*, 286 SCRA 177].

iv) For Inclusion and Exclusion proceedings, see Registration of Voters, ELECTION LAWS, infra.

g) Recommend to 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, malpractice, and nuisance candidates.

h) Submit to the President and Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum or recall.

3. Statutory Powers of the Comelec. Secs. 52 and 57, BP 881, enumerate, among others, as the statutory powers of the Comelec, to exercise supervision and control over officials required to perform duties relative to the conduct of elections, promulgate rules and regulations, punish contempt, inquire into financial records of candidates, groups, etc., prescribe forms to be used in elections, procure supplies and materials needed for the election, enlist nonpartisan groups to assist it, fix periods for pre-election requirements, etc.. See *Dumarpa v. Dimaporo*, 177 SCRA 478.

a) Power to declare failure of election; call for special elections. Sec. 4, R.A. 7166, provides that the Comelec, sitting en banc, by a majority vote of its members, may declare failure of elections and call for special elections, as provided in Sec. 6, BP 881. The Comelec may exercise such power motu proprio or upon a verified petition, and the hearing of the case shall be summary in nature. In *Joseph Peter Sison v. Comelec*, G.R. No. 134096, March 3, 1999, the Supreme Court said that there are only three instances where a failure of elections may be declared, namely: [a] the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; [b] 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 causes; and [c] 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.

i) However, before the Comelec can act on a verified petition seeking a declaration of failure of election, two conditions must concur, namely: (i) no voting has taken place in the precincts concerned on the date fixed by law, or even if there was voting, the election nevertheless resulted in a failure to elect; and (ii) the votes cast would affect the results of the election [*Mitmug v. Comelec*, 230 SCRA 54; *Loong v. Comelec*, 257 SCRA 1; *Hassan v. Comelec*, 264 SCRA 125; *Batabor v. Comelec*, G.R. No. 160428, July 21, 2004]. A petition to declare a failure of election is neither an election protest nor a pre-proclamation controversy [*Borja v. Comelec*, 260 SCRA 604].

ii) In *Loong v. Comelec*, G.R. No. 133676, April 14, 1999, the Supreme Court denied the petition to declare failure of election, because when the Comelec resorted to manual count after the automated machines failed to read the ballots correctly, it did not do so arbitrarily. The Court found that there

was, after all, compliance with the due process clause because the petitioner and the intervenor were given every opportunity to oppose the manual count, and the result of the said count was reliable.

iii) For the validity of an election, it is essential that the voters have notice in some form, either actual or constructive, of the time, place and purpose thereof. The time must be authoritatively designated in advance. This requirement of notice becomes stricter in cases of special elections where it was called by some authority after the happening of a condition precedent, or at least, there must be substantial compliance therewith, so that it may fairly and reasonably be said that the purpose of the statute had been carried into effect. The sufficiency of notice is based on whether the voters generally have knowledge of the time, place and purpose of the elections so as to give them full opportunity to attend the polls and express their will [*Hassan v. Comelec*, 264 SCRA 125]. In *Lucero v. Comelec*, *infra.*, it was held that in fixing the date of the special elections, the Comelec should see to it that [a] it should not be later than 30 days after the cessation of the cause of the postponement or suspension of the election or failure to elect; and [b] it should be reasonably close to the date of the election not held, suspended or which resulted in failure to elect.

iv) No law provides for a reglementary period within which to file a petition for the annulment of an election if there has been no proclamation yet [*Loong v. Comelec*, 257 SCRA 1].

v) Special election. The prohibition on conducting special elections after 30 days from the cessation of the cause for failure of election is not absolute. It is directory, not mandatory, and the Comelec has residual powers to conduct special elections even beyond the deadline prescribed by the law. The Comelec may fix other dates for the conduct of the special elections when the same cannot be reasonably held within the period prescribed by law [*Sambarani v. Comelec*, G.R. No. 160427, September 15, 2004].

va) Since there was failure of elections, petitioners can legally remain in office as barangay chairmen of the respective barangays in a holdover capacity. They shall continue to discharge their powers and duties, and enjoy the rights and privileges pertaining to the office. While it is true that Sec. 43c of the Local Government Code limits the term of elective barangay officials to three years, Sec. 5, R.A. 9164 explicitly provides that incumbent barangay officials may continue in office in a hold-over capacity until their successors and elected and shall have qualified [*Sambarani v. Comelec*, *supra*].

b) Exclusive original jurisdiction over all pre-proclamation controversies. While the Comelec is restricted, in pre-proclamation cases, to an

examination of the election returns on their face and is without jurisdiction to go beyond them and investigate election irregularities, the Comelec is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in an action for annulment of election results or for a declaration of failure of elections. Thus, the Comelec may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether the elections had, indeed, been free, honest and clean [*Loong v. Comelec*, 257 SCRA 1], See Pre-Proclamation Contests, infra.

4. Party System. A free and open party system shall be allowed to evolve according to the free choice of the people [Sec. 6, Art. IX-C].

a) No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system [Sec. 7, Art. IX-C]. Relate this to Sec. 5, par. 2, Art. VI, providing for 20% of the seats in the House of Representatives being allocated to party-list representatives. Read also R.A. 7941 (An Act Providing for the Election of Party-List Representatives Through the Party-List System).

b) Parties registered under the party-list system shall be entitled to appoint poll watchers in accordance with law [Sec. 8, Art. IX-C],

c) This policy envisions a system that shall "evolve according to the free choice of the people", not one molded and whittled by the Comelec. When the Constitution speaks of a multi-party system, it does not contemplate * the Comelec splitting parties into two [*Laban ng Demokratikong Pilipino v. Comelec*, *supra*].

5. Election Period. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of the election and shall end thirty days thereafter [Sec. 9, Art. IX-C],⁶

6. Judicial Review of Comelec Decisions. A petition for certiorari under Rule 65 of the Rules of Court, filed with the Supreme Court within 30 days from receipt of a copy of final order, ruling or decision of the Commission en banc.. See *Aratuc v. Comelec*, 88 SCRA 251; *Filipinas Engineering v. Ferrer*, 135 SCRA 25].

D. The Commission on Audit.

1. *Composition/Appointment*. A Chairman and two Commissioners, who shall be natural born Filipino citizens, at least 35 years of age, CPAs with

not less than 10 years of auditing experience or members of the Philippine Bar with at least 10 years practice of law, and must not have been candidates in the election immediately preceding the appointment. At no time shall all members belong to the same profession [Sec. 1(1), Art. IX-D]. They shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment [Sec. 1(2), Art. IX-D].

2. Powers and Duties [Sec. 2, Art. IX-D],

a) 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 or pertaining to, the Government.

i) On post-audit basis: Constitutional Commissions and bodies or offices granted fiscal autonomy under the Constitution; autonomous state colleges and universities; other government-owned or controlled corporations and their subsidiaries; and non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government.

ia) In *Orocio v. Commission on Audit*, 213 SCRA 109, the Supreme Court held that the Commission on Audit has the power to overrule the 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.

ib) 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. Commission on Audit*, 238 SCRA 463],

ii) Temporary or special pre-audit: Where the internal control system of the audited agency is inadequate.

iii) The duty to pass in audit a salary voucher is discretionary [*Gonzales v. Provincial Board of Iloilo*, 12 SCRA 711]. But see *Guevara v. Gimenez*, 6 SCRA 813, where the Supreme Court said that the authority of the Auditor General is limited to auditing, i.e., to determine whether there is a law appropriating funds for a given purpose, whether there is a contract, whether the goods or services have been delivered, and whether payment has been

authorized. When all these are found to be in order, then the duty to pass a voucher in audit becomes ministerial. NOTE, however, that under the 1987 Constitution, with its expanded powers, the Commission on Audit may validly veto appropriations which violate rules on unnecessary, irregular, extravagant or unconscionable expenses.

iv) The Commission on Audit has audit jurisdiction over "government-owned and controlled corporations with original charters, as well as government-owned or controlled corporations without original charters. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law. Local Water Districts (LWDs) are not private corporations because they are not created under the Corporation Code; they exist by virtue of PD 198, the special enabling charter which expressly confers on LWDs corporate powers. COA, therefore, exercises audit jurisdiction over LWDs [*Feliciano v. Commission on Audit, G.R. No. 147402, January 14, 2004*].

b) Keep the general accounts of Government, and preserve vouchers and supporting papers for such period as provided by law.

c) Authority to define the scope of its audit and examination, establish techniques and methods required therefor. In *Development Bank of the Philippines v. Commission on Audit, G.R. No. 88435, January 15, 2002*, the Supreme Court 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.

d) Promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, expensive, extravagant or unconscionable expenditures or uses of government funds or property.ⁱ⁾

i) In *Sambeli v. Province of Isabela*, 210 SCRA 80, it was held that the Commission on Audit may stop the payment of the price stipulated in government contracts when found to be irregular, extravagant or unconscionable. In *Bustamante v. Commission on Audit*, 216 SCRA 134, 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 Sec. 2, Art. IX-D of the Constitution; and the prohibition may be made to apply to officials of the National Power

3. Jurisdiction of the Commission. No law shall be passed exempting any entity of Government, or any investment of public funds, from the jurisdiction of the Commission on Audit [Sec. 3, Art. IX-D],

a) 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 government-owned and controlled corporations, 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. Commission on Audit G R No. 149154, June 10, 2003*],

b) Philippine Airlines, having ceased to be a government-owned or -controlled corporation, is no longer under the audit jurisdiction of the Commission on Audit [*Philippine Airlines v. Commission on Audit, 245 SCRA 39*].

c) In *Bagatsing v. Committee on Privatization, supra.*, 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 two were disqualified — then, there was no failure of bidding.

XIII. LOCAL GOVERNMENT

[See separate book on Local Government, infra.]

XIV. ACCOUNTABILITY OF PUBLIC OFFICERS

A. Statement of Policy. 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 [Sec. 1, Art. XI].

1. Read R.A. 6713.
2. Relate to Liability of Public Officers, LAW OF PUBLIC OFFICERS, infra.

B. Impeachment.

1. *Defined:* A national inquest into the conduct of public men.
2. *Impeachable Officers:* President, Vice President, Chief Justice and Associate Justices of the Supreme Court, Chairmen and Members of the Constitutional Commissions, and the Ombudsman. The foregoing enumeration is exclusive.
 - a) In *In Re: First Indorsement from Hon. Raul M. Gonzalez*, A.M. No. 88-4-5433, April 15, 1988, the Supreme Court said that the Special Prosecutor (Tanodbayan) cannot conduct an investigation into alleged misconduct of a Supreme Court justice, with the end in view of filing a criminal information against him with the Sandiganbayan, as this would violate the security of tenure of Supreme Court justices.
 - b) An impeachable officer who is a member of the Philippine Bar cannot be disbarred without first being impeached [*Jarque v. Desierto*, 250 SCRA 11].³
3. *Grounds for Impeachment* Culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of the public trust. This enumeration is also exclusive.

4. *Procedure for Impeachment.* Congress shall promulgate its rules on impeachment to effectively carry out the purpose.

a) Initiating impeachment case. The House of Representatives shall have the exclusive power to initiate all cases of impeachment. In *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, the Supreme Court ruled that Sections 16 and 17 of Rule V of the House Impeachment Rules which state that impeachment proceedings are deemed initiated (i) if there is a finding by the House Committee on Justice that the verified complaint and/ or resolution is sufficient in substance, or (ii) once the House itself affirms or overturns the finding of the Committee on Justice that the verified complaint and/ or resolution is not sufficient in substance, or (iii) by the filing or endorsement before the Secretary General of the House of Representatives of a verified complaint or a resolution of impeachment by at least 1/3 of the members of the House clearly contravene Sec. 3(5) of Article XI of the Constitution, as they give the term "initiate" a meaning different from "filing". The Supreme Court then said that the impeachment case is deemed initiated when the complaint (with the accompanying resolution of indorsement) has been filed with the House of Representatives and referred to the appropriate Committee.

i) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any member thereof.

ii) Included in the Order of Business within 10 session days, and referred to the proper Committee within 3 session days.

ia) If the verified complaint 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. [There is no need to refer the same to the proper Committee.]

iii) The Committee, after hearing, and by a majority vote of all its members, shall submit its report to the House within 60 session days from such referral, together with the corresponding resolution.

iv) A vote of at least 1/3 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.

Iva) This procedure will prevent the recurrence of the incident in *Romulo v. Yniguez*, 141 SCRA 263 and in *De Castro v.*

Committee on Justice, Batasan Pambansa, G.R. No. 71688, September 3, 1985.

b) Limitation on initiating of impeachment case: Not more than once within a period of one year against the same official.

i) In *Francisco v. House of Representatives, supra.*, the Supreme Court said that considering that the first impeachment complaint was filed by former President Estrada against Chief Justice Hilario G. Davide, Jr. along with seven associate justices of this Court on June 02, 2003 and referred to the House Committee on Justice on August 05, 2003, the second impeachment complaint filed by Representatives Edilberto C. Teodoro, Jr. and Felix William Fuenteabella 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.

c) Trial and decision. 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.

d) 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.

C. The Sandiganbayan. 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.

1. Composition. Under P. D. 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 each. See R.A. 8249.²

2. Jurisdiction. The following requisites must concur in order that a case may fall under the exclusive jurisdiction of the Sandiganbayan: [a] The offense committed is a violation of R.A. 3019, R.A. 1379, Chapter II, Sec. 2, Title VII, Book II of the Revised Penal Code, Executive Order Nos. 1, 2, 14, and 14-A, issued in 1986, or other offenses or felonies whether simple or complexed with other crimes; [b] The offender committing the offenses (violating R.A. 3019, R.A. 1379, the RPC provisions, and other offenses, is

employee holding any of the positions enumerated in par. a, Sec. 4, R.A. 8249; and [c] The offense committed is in relation to the office [*Lacson v. Executive Secretary, G.R. No. 128096, January 20, 1999*].

a) In *Macalino v. Sandiganbayan*, G.R. No. 140199-200, February 6, 2002, it was held that, because the Philippine National Construction Corporation (PNCC) has no original charter, petitioner, an officer of PNCC, is not a public officer. As such, 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 with a crime within the jurisdiction of the Sandiganbayan.

b) Whether or not the Sandiganbayan or the Regional Trial Court 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 official duties by the accused [*Lacson v. Executive Secretary, supra*].

c) In *Binay v. Sandiganbayan*, G.R. No. 120281-83, October 1, 1999, the Supreme Court discussed the ramifications of Sec. 7, R.A. 8249, as follows: (1) If trial of the cases pending before whatever court has already begun as of the approval of R.A. 8249, the law does not apply; (2) if trial of cases pending before whatever court has not begun as of the approval of R.A. 8249, then the law applies, and the rules are: [a] If the Sandiganbayan has jurisdiction over a case pending before it, then it retains jurisdiction; [b] If the Sandiganbayan has no jurisdiction over a case pending before it, the case shall be referred to the regular courts, [c] 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; [d] If a regular court has jurisdiction over a case pending before it, then said court retains jurisdiction.³

3. *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 settled that Sec. 13, R.A. 3019, makes it mandatory for the Sandiganbayan 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]. The only ground that may be raised in order to avert the mandatory preventive suspension is the invalidity of the criminal information.

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*, G.R. No. 135789, January 31, 2002].

D. The Ombudsman.

1. *Composition:* An Ombudsman to be known as the 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.

2. *Qualifications:* The Ombudsman and his Deputies must be natural born citizens of the Philippines, at least 40 years of age, of recognized probity and independence, members of the Philippine Bar, and 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.

3. *Appointment of the Ombudsman and his Deputies:* 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: Seven years without reappointment.

b) Rank and Salary: The Ombudsman and his Deputies shall have the rank and salary of Chairman and Members, respectively, of the Constitutional Commissions, and their salary shall not be decreased during their term of office.

c) Fiscal Autonomy. The Office of the Ombudsman shall enjoy fiscal autonomy.⁴

4. *Disqualifications/Inhibitions:* During their tenure, shall not hold any other office or employment; shall not 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; shall not be

directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, or any of its subdivisions, etc.; and shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

5. *Powers and duties.* Read Secs. 12 and 13, Art. XI. Read also the Ombudsman Law [R.A. 6770]. In *Camanag v. Guerrero*, G.R. No. 121017, February 17, 1997, Secs 15 and 17 of R.A. 6770 were declared valid and constitutional.

a) In *Quimpo v. Tanodbayan*, 146 SCRA 137, the Supreme Court held that the Tanodbayan has jurisdiction over officials and employees of Petrophil Corporation, even if Petrophil does not have an original charter. But in *Leyson v. Ombudsman*, G.R. No. 134990, April 29, 2000, it was held that the jurisdiction of the Ombudsman over "government-owned or -controlled corporations" should be understood in relation to par. 13, Sec. 2, Administrative Code of 1987, which defines government-owned or -controlled corporations. The definition mentions three requisites, namely: [i] an agency organized as a stock or non-stock corporation; [ii] vested with functions relating to public needs, whether governmental or proprietary; and [iii] owned by the Government directly or through its instrumentalities, either wholly or, where applicable as in the case of stock corporations, to the extent of at least 51 % of its capital stock. In this case, since there is no showing that Gran Export and/or United Coconut are vested with functions related to public needs, whether governmental or proprietary, unlike Petrophil, then the said corporations do not fall within the jurisdiction of the Ombudsman.

b) In the recent *Khan v. Office of the Ombudsman*, G.R. No. 125296, July 20, 2006, the Supreme Court reiterated the rule that the Office of the Ombudsman has no jurisdiction to investigate employees of government-owned or -controlled corporations organized under the Corporation Code. Based on Sec. 13 (2), Art. XI, of the Constitution, the Office of the Ombudsman exercises jurisdiction only over public officials/employees of GOCCs with *original charters*.

c) In *Orap v. Sandiganbayan*, 139 SCRA 252, it was held that the Special Prosecutor may prosecute before the Sandiganbayan judges accused of graft and corruption, even if they come under the administrative supervision of the Supreme Court. In *Inting v. Tanodbayan*, 97 SCRA 494, it was held that pursuant to PD 1607, the Tanodbayan could review and reverse the findings of the City Fiscal, and order him to withdraw certain charges, inasmuch as the President's power of control (in this instance) is exercised not by the Secretary of Justice but by the Tanodbayan because the offense/s charged were

allegedly committed by a public functionary in connection with her office. But the prosecution of election offenses is a function belonging to the COMELEC and may not be discharged by the Tanodbayan [*De Jesus v. People, supra.*; *Corpus v. Tanodbayan, supra.*].

c) In *Almonte v. Vazquez, supra.*, 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 a preliminary investigation before the Office of the Ombudsman, a complaint "in any form or manner" is sufficient [*Garcia v. Miro, G.R. No. 148944, February 05, 2003*]. In *Diaz v. Sandiganbayan, 219 SCRA 675*, it was held that Sec. 12, Art. IX of the Constitution mandates the Ombudsman to act promptly on complaints filed in any form or manner against public officials or employees of the Government; accordingly, even if the complaint against a particular official or employee is not drawn up in the usual form, the Ombudsman may still take cognizance of the case.

d) Under Sec. 24, R.A. 6770, the Ombudsman or his deputy is authorized to preventively suspend any officer or employee under his authority pending an investigation irrespective of whether such officer or employee is employed in the Office of the Ombudsman or in any other government agency [*Buenaseda v. Flavier, 226 SCRA 645*]. This was reiterated in *Lastimosa v. Vazquez, 243 SCRA 497*, where the Supreme Court said that whether the evidence of guilt is strong to warrant preventive suspension is left to the determination of the Ombudsman. There is no need for a preliminary hearing such as that required in a petition for bail.

e) Under the Constitution, the Ombudsman shall have other duties and functions as may be provided by law. Accordingly, the Congress can, by statute, prescribe other powers, functions and duties to the Ombudsman. Thus, because he is authorized under R.A. 6770 to utilize the personnel of his office to assist in the investigation of cases, the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy Ombudsman for Military Affairs [*Acop v. Office of the Ombudsman, 248 SCRA 566*]. The Ombudsman can also investigate criminal offenses committed by public officers which have no relation to their office [*Vasquez v. Alino, 271 SCRA 67*].

f) 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*].

g) But Sec. 27, R.A. 6770, which authorizes an appeal to the Supreme Court from decisions of the Ombudsman in administrative disciplinary cases, is unconstitutional for violating Sec. 30, Art. VI of the Constitution, which prohibits a law increasing the appellate jurisdiction of the Supreme Court passed without its advice or concurrence. Henceforth, all such appeals shall be made to the Court of Appeals in accordance with Rule 43 of the Rules of Civil Procedure [*Villavert v. Desierto*, G.R. No. 133715, February 13, 2000]. See also *Fabian v. Desierto*, G.R. No. 129742, September 16, 1998; *Namuhe v. Ombudsman*, G.R. No. 124965, October 19, 1998; *Mendoza-Arce v. Office of the Ombudsman*, G.R. No. 149148, April 05, 2002..

i) Pursuant to its ruling in *Fabian*, the Court issued Circular A.M.No. 99-2-02-SC, providing that any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order of the Ombudsman filed with this Court after March 15, 1999 shall no longer be referred to the Court of Appeals, but must be forthwith denied or dismissed, respectively.

ii) But in *Coronet v. Desierto*, G.R. No. 149022, April 8, 2003, the Court suspended its application of the said Circular and referred the case to the Court of Appeals for adjudication on the merits because it appeared *prima facie* from the petitioner's allegation that the Ombudsman committed grave abuse of discretion.

h) In *Uy v. Sandiganbayan*, G.R. No. 105965-70, March 20, 2001, it was held that under Secs. 11 and 15, RA 6770, the Ombudsman is 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. This Court cannot derogate the power by limiting it only to cases cognizable by the Sandiganbayan. In *Office of the Ombudsman v. Enoc*, G.R. No. 145957-68, January 25, 2002, the Supreme Court held that the power of the Ombudsman to investigate and to prosecute, as granted by law, is plenary and unqualified. It pertains to any act or omission of any public officer or employee which appears to be illegal, unjust, improper or inefficient. The law does not make any distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. This was reiterated in *Bureau of Internal Revenue v. Office of the Ombudsman*, G.R. No. 115103, April 11, 2002, and in *Laurel v. Desierto*, G.R. No. 145368, April 12, 2002.

i) The fact that the petitioner holds a Salary Grade 31 position (so that the case against him falls exclusively within the jurisdiction of the Sandiganbayan) does not mean that only the Ombudsman has the authority to conduct preliminary investigation of the charge of coup d'etat against him. The authority (of the Ombudsman) to investigate is not an exclusive authority, but rather a shared or concurrent authority with the Department of Justice Panel of Investigators, "in respect of the offense charged" [*Honasan v. Panel of Investigating Prosecutors*, G.R. No. 159747, April 13, 2004].

ii) 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 respect for the investigatory and prosecutorial 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, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discernment on the part of the fiscal or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint filed by a private complainant [*Olairez v. Sandiganbayan*, G.R. No. 148030, March 10, 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.

iii) Thus, in *People v. Velez*, G.R. No. 138093, February 19, 2003, the Supreme Court said that when the Office of the Ombudsman, through the Special Prosecutor, filed the Motion to Withdraw Information on its finding that there was no probable cause against respondents, except the City Engineer, the Office of the Ombudsman merely exercised its investigatory and prosecutorial powers. Case law holds that this Court is loathe to interfere with the exercise by the Ombudsman of its powers.

iiia) But while the Office of the Ombudsman has the discretion to determine whether an information should be withdrawn and a criminal case should be dismissed, and to move for the withdrawal of such information or dismissal of a criminal case, the final disposition of the said motion and of the case is addressed to the sound discretion of the Sandiganbayan, subject only to the caveat that the action of the Sandiganbayan must not impair the substantial rights of the accused and the right of the People to due process of law [*People v. Velez, supra.*].'

i) Under R.A. 1405 (Law on Secrecy of Bank Deposits), before an in camera inspection of bank accounts may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case. In this case, there is only an investigation being done by the Ombudsman. There is, therefore, no valid reason to compel the production of the bank documents, or to hold the bank manager in contempt for refusing to produce said documents. Zones of privacy are recognized and protected in our laws [*Marquez v. Desierto*, G.R. No. 135882, June 27, 2001]. Thus, in *Office of the Ombudsman v. Judge Ibay*, G.R. No. 137538, September 3, 2001, the Supreme Court upheld the jurisdiction of the trial court to take cognizance of the petition for declaratory relief filed by Marquez when the Ombudsman threatened to cite her for contempt for her refusal to produce the bank documents demanded in the investigation.

j) From the ruling in *Office of the Ombudsman v. Court of Appeals*, G.R. No. 160675, June 16, 2006, it is now clear that pursuant to Section 25 of R.A. 6770, the Ombudsman has the power to impose penalties in administrative cases. And in connection with this administrative disciplinary authority, the Ombudsman and his" deputies are expressly given the power to preventively suspend public officials and employees facing administrative charges, in accordance with Sec. 24, R.A. 6770.

i) Thus, in *Office of the Ombudsman v. Court of Appeals*, G.R. No. 168079, July 17, 2007, the Court reiterated *Estarija v. Ranada*, *supra*., where it upheld the constitutionality of Sections 15, 21 and 25 of R.A. 6770, and ruled that the Ombudsman has the constitutional power to directly remove from government service an erring public official, other than a Member of Congress or of the Judiciary.

ii) In *Office of the Ombudsman v. Madriaga*, G.R. No. 164316, September 27, 2006, the Supreme Court reiterated that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and direct and compel the head of the office or agency concerned to implement the penalty imposed. The Ombudsman's authority to impose administrative penalty and enforce compliance therewith is not merely recommendatory; it is mandatory within the bounds of law. The implementation of the order imposing the penalty is, however, to be coursed through the proper officer.

iii) These recent decisions have modified *Tapiador v. Office of the Ombudsman*, G.R. No. 129124, March 15, 2002, where the Court said

that the Ombudsman can only recommend to the officer concerned the removal of a public officer or employee found to be administratively liable. They also reiterate, clarify and strengthen the Court's pronouncement in *Ledesma v. Court of Appeals, G.R. No. 161629, July 29, 2005*, where it held that the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action; that the Ombudsman's recommendation is not merely advisory in nature but actually mandatory within the bounds of law. The Court said that this should not be interpreted as usurpation by 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.

iv) The legislative history of R.A. 6770 bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an active watchman, not merely a passive one" [*Ledesma v. Court of Appeals, supra*.].

6. *The Special Prosecutor.* The existing Tanodbayan (at the time of the adoption of the 1987 Constitution) shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter provided by law, except those conferred on the Office of the Ombudsman created under the Constitution. See *Zaldivar v. Gonzales, 160 SCRA 843*.

a) The Tanodbayan (called the Special Prosecutor under the 1987 Constitution) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. The right to do so was lost when the 1987 Constitution became effective on February 2, 1987 [*Salvador Perez v. Sandiganbayan, G.R. No. 166062, September 26, 2006*],

E. Ill-gotten Wealth. 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.¹

1. This provision applies only to civil actions for recovery of ill-gotten wealth and not to criminal cases. Thus, prosecution of offenses

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, G.R. No. 130140, October 25, 1999*],

2. Read also Republic Act 1379 [An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Procedure Therefor].

F. Restriction on Loans. 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, 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.

G. Statement of assets, liabilities and net worth. 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 of general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

H. Allegiance to the State and to the Constitution. 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.

XV. NATIONAL ECONOMY AND PATRIMONY

A. Goals [Sec. 1, Art. XII].

1. More equitable distribution of opportunities, income and wealth.
2. Sustained increase in amount of goods and services produced by the nation for the benefit of the people.
3. Expanding production as the key to raising the quality of life for all, especially the underprivileged.

[For the attainment of these goals, 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. The State shall protect Filipino enterprises from unfair competition and trade practices.]

B. Natural Resources.

1. *The 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; but ownership is vested in the State as such rather than in the head thereof [*Lee Hong Kok v. David*, 48 SCRA372],

a) Sec. 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.

b) In *Sunbeam Convenience Food v. Court of Appeals*, 181 SCRA 443, the Supreme Court declared: “We adhere to the Regalian Doctrine wherein 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. In *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*, G.R. No. 129401, February 2, 2001]. In *Director of Lands v. Intermediate Appellate Court*, 219 SCRA 339, the Court said that consonant with the 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 [*United Paracale v. de la Rosa*, 221 SCRA 108].

c) 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 until released therefrom and rendered open to disposition [*Republic v. Register of Deeds of Quezon*, 244 SCRA 537]. Forest land is not 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 or other 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 [*Ituralde v. Falcasantos*, G.R. No. 128017, January 20, 1999].²³

2. *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.

3. *Citizenship Requirements*.

a) Co-production, joint venture or production sharing agreements [for exploration, development and utilization of natural resources]: Filipino

or corporations or associations at least 60% of whose capital is Filipino owned. Agreements shall not exceed a period of 25 years, renewable for another 25 years [**Sec. 2, Art. XII**].

b) Use and enjoyment of the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone [P.D. 1599 (June 11, 1978); UN Convention on the Law of the Sea (ratified by RP in August, 1983)]: Exclusively for Filipino citizens [**Sec. 2, Art. XII**].

i) The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore [Sec. 7, Art. XII], A "marginal" fisherman is defined by the Supreme Court in *Tarto v. Socrates, G.R. No. 110249, August 21, 1997*, as an individual engaged in fishing whose margin of return or reward from his harvest of fish, as measured 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 for his livelihood. Sec. 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.

c) Alienable lands of the public domain [which shall be limited to agricultural lands]: Only 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.

d) Certain areas of investment [as Congress shall provide when the national interest so dictates]: Reserved for Filipino citizens or corporations 60% of whose capital is Filipino owned, although Congress may prescribe a higher percentage of Filipino ownership [**Sec. 10, Art. XII**.¹⁹]

i) In the grant of rights, privileges and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos [Sec. 10, Art. XII], Thus, in *Manila Prince Hotel v. GSIS, 267 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 associated with our struggle for sovereignty, independence and nationhood. Verily, the Manila Hotel has become part of our national economy and patrimony, and 51% of

comes within the purview of the constitutional shelter, for it comprises the majority and controlling stock. Consequently, the Filipino First policy provision 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.

e) 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 [**Sec. 11, Art. XII**].

i) 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 be Filipino citizens. In **Pilipino Telephone Corporation v. National Telecommunications Commission, G.R. No. 138295, August 28, 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 exclusivity 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.

ii) 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., Land Transportation Franchising and Regulatory Board, Energy Regulatory Board, etc., may be empowered to do so. This is reiterated in **Philippine Airlines v. Civil Aeronautics Board, G.R. No. 119528, March 26, 1997**, where it was held that Sec. 10, R.A. 776, reveals the clear intent of Congress to delegate the authority to regulate the issuance of a license to operate domestic air transport services. Indeed, in **Associated Communications & Wireless Services - United Broadcasting Networks v. National Telecommunications Commission, G.R. No. 144109, February 17, 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.

iii) 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 the coaches, rail stations, terminals and power plant, not public utility. What constitutes a public utility is not their ownership but their use to the public [*Tatad v. Garcia, supra.*]. In *Bagatsing v. Committee on Privatization*, *supra.*, 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 Sec. 11, Art. XII 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.

iiia) 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 [*JG Summit Holdings v. Court of Appeals, G.R. No. 124293, September 24, 2003*].

iv) 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 the temporary privilege of using them. A franchise is a privilege subject to amendment, and the provision of B.P. 881 granting free airtime to the Comelec is an amendment of the franchise of radio and television stations {*Telecommunications and Broadcast Attorneys of the Philippines v. Comelec, 289 SCRA 337*}.

v) A joint venture falls within the purview of an "association" pursuant to Sec. 11, Art. 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 [*JG Summit Holdings v. Court of Appeals, G.R. No. 124293, November 2, 2000*].⁴

4. **Classification of Lands of the Public Domain.** Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands may further be classified by law according to the uses to which they may be devoted, x x x Taking into account the requirements of conservation, ecology and development, and subject to the requirements of agrarian reform, Congress shall determine, by law, the size

lands of the public domain which may be acquired, developed, held or leased and the conditions therefor [**Sec. 3, Art. XII**]. 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, G.R. No. 130906, February 11, 1999**].

a) Alienable lands of the public domain shall be limited to agricultural lands. See: **Republic v. Court of Appeals, 148 SCRA 480; Ungay Malebago Mines v. Intermediate Appellate Court, 154 SCRA 504. In Palomo v. Court of Appeals, 266 SCRA 392**, 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; it 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.

i) To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government such as a presidential proclamation or an executive order or administrative action, investigation reports of the Bureau of Lands investigator, or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply [**Republic v. Candymaker, Inc., G.R. No. 163766, June 22, 2006**]. A certification of the Community Environment and Natural Resources Officer (CENRO) in the DENR stating that the land subject of an application is found to be within the alienable and disposable site in a land classification project map is sufficient evidence to show the real character of the land subject of the application.

ii) 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, G.R. No. 130906, February 11 1999**].

b) Private corporations or associations may not hold such alienable lands of the public domain except by lease. In **Meralco v. Casto-Bartolome, 114 SCRA 799**, the Court held that as between the State and Meralco, the land is still public land. It would cease to be public land only upon the issuance of the certificate of title to any Filipino citizen qualified to acquire the same. Meralco, being a juridical person, is disqualified. However, this ruling was

abandoned in *Director of Lands v. Intermediate Appellate Court and Acme Plywood & Veneer Co.*, 146 SCRA 509, where the Supreme Court declared that the 1973 Constitution cannot impair vested rights. Where the land was acquired in 1962 when corporations 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.

i) 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. Public Estates Authority, G.R. No. 133250, November 11, 2003*].

c) Congress shall determine the specific limits of forest lands and national parks, marking clearly their boundaries on the ground [*Sec. 5, Art. XII*].

d) The State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well being [*Sec. 5, Art. XII*].

5. **The Stewardship Concept.** 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 [*Sec. 6, Art. XII*],

a) The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands, x x x The State may resettle landless farmers and farm workers in its own agricultural estates which shall be distributed to them in the manner provided by law [*Sec. 6, Art. XII*].

C. Private Lands.

1. **Rule:** 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 [*Sec. 7, Art. XII*].

a) The primary purpose of the constitutional provision disqualifying aliens from acquiring lands of the public domain and private lands is the conservation of the national economy and patrimony [*Muller v. Muller, G.R. No. 149615, August 29, 2006*]. In this case, the respondent is disqualified from owning land in the Philippines. Where the purchase is made in violation of an existing statute, no trust can result in favor of the guilty party. To allow reimbursement would, in effect, permit respondent to enjoy the fruits of the property which he is not allowed to own. The sale of land as to him was null and void. In any event, he had and has not capacity or personality to question the subsequent sale of the same property by his wife on the theory that he is merely exercising the prerogative of a husband in respect of conjugal property. To sustain such theory would permit indirect contravention of the constitutional prohibition.

b) Any sale or transfer in violation of the prohibition is null and void. In *Ong Ching Po v. Court of Appeals*, 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.

i) This was reiterated recently in *Frenzel v. Catito, G.R. No. 143958, July 11, 2003*, where the Supreme Court said that inasmuch as the petitioner is an alien, he is disqualified from acquiring and owning lands in the Philippines. The sale of the three parcels of land 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.

c) An action to recover the property sold filed by the former owner will lie, the pari delicto ruling having been abandoned as early as *Philippine Banking Corporation v. Lui She*, 21 SCRA 52, where the Supreme Court declared that a lease for 99 years, with a 50-year option to purchase the property if and when Wong Heng would be naturalized, is a virtual surrender of all rights incident to ownership, and therefore, invalid.

d) Land tenure is not indispensable to the free exercise of religious profession and worship. Thus, a religious corporation, controlled by non- Filipinos, cannot acquire and own lands even for a religious use or purpose [*Register of Deeds of Rizal v. Ung Sui Si Temple (1955)*]. Thus, for a religious corporation sole to acquire lands, it must appear that at least 60% of the faithful or its members are citizens of the Philippines in order to comply with the citizenship requirement. This is so regardless of the citizenship of the incumbent inasmuch as a corporation sole is merely an administrator of the

temporalities or properties titled in its name and for the benefit of its members [*Roman Catholic Administrator of Davao Diocese, Inc. v. Land Registration Commission (1957)*].

e) However, 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. Intermediate Appellate Court and Gonzalvez, 175 SCRA 398; United Church Board for World Ministries v. Sebastian, 159 SCRA 446; Yap v. Grajeda, 121 SCRA 244; Godinez v. Pak Luen, 120 SCRA 223*

. This principle is reiterated in *Haliliv. Court of Appeals, G.R. No. 113539, March 12, 1997* and *Lee v. Director of Lands, G.R. No. 128195, October 3, 2001*.

2. Exceptions to the rule:

a) Hereditary Succession. This does not apply to testamentary dispositions [*Ramirez v. Vda. De Ramirez, 111 SCRA 704*].

b) 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 [*Sec. 8, Art. XII*].

i) This section is similar to Sec. 15, Art. XIV, 1973 Constitution, pursuant to which B.P. 185 was passed. B.P. 185 provided that a natural-born citizen of the Philippines who lost his Filipino citizenship may be the transferee of private land up to a maximum of 1,000 square meters, if urban, or one hectare, if rural, to be used by him as his residence. 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 Filipino citizens [*Republic v. Court of Appeals, 235 SCRA 567*],

ii) B.P 185 has now been amended by R.A. 8179 which has increased the maximum area of private land which the former natural-born Filipino citizen may acquire 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.

c) Americans hold valid title to private lands as against private persons.
i)

i) In *Republic v. Quasha, 46 SCRA 160*, the Supreme Court held that American citizens and American-owned and controlled ..

cannot validly acquire private agricultural lands under the Parity Amendment, since the exceptional rights granted to them under the said Amendment refer only to agricultural, mineral and timber lands of the public domain and natural resources, and conduct and operation of public utilities. This is consistent with the ruling in *Krivenko v. Register of Deeds (1947)*.

ii) However, this ruling was effectively modified by Section 11, Art. XVII [Transitory Provisions] of the 1973 Constitution, which reads: "Titles to private lands acquired by such persons before such date (July 3, 1974) shall be valid as against private persons only."

iia) Thus, 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],

3. Remedies to recover private land from disqualified alien.

a) Escheat proceedings.

b) 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. Court of Appeals, 172 SCRA 1*]. The action of the State for reversion to public domain of land fraudulently granted to private individuals is imprescriptible [*Baguio v. Republic, G.R. No. 119682, January 21, 1999*]. But it is the State, alone, which may institute reversion proceedings against public lands allegedly acquired through fraud and misrepresentation pursuant to Sec. 101 of the Public Land Act. Private parties are without legal standing at all to question the validity of respondents' title [*Urquiaga v. Court of Appeals, G.R. No. 127833, January 22, 1999*]. Thus, in *Tankiko v. Cezar, G.R. No. 131277, February 2, 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.ⁱ⁾

i) The State can be put in estoppel 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

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. Sandiganbayan*, 226 SCRA 314, the Court declared that the State may be held in estoppel for irregular acts and mistakes of its officials. Thus, in *Republic v. Court of Appeals*, G.R. No. 116111, January 21, 1999, because for nearly 20 years starting from the issuance of the titles in 1966 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 unexplained 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.

c) An action for recovery filed by the former Filipino owner, the pari delicto doctrine having been abandoned, unless the land is sold to an American citizen prior to July 3, 1974 and the American citizen obtained title thereto.

D. Preference for Filipino Labor, etc.. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive [Sec. 12, Art. XII]. See *Tanada v. Angara*, 272 SCRA 18.

E. Practice of Profession. The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law [Sec. 14, Art. XII].

1. In *Board of Medicine v. Yasuyuki Ota*, G.R. No. 166097, July 14, 2008, the Supreme Court, while upholding the principle that the license to practice medicine is a privilege or franchise granted by the government, declared that the power to regulate the exercise of a profession or pursuit of an occupation cannot be exercised by the State or its agents in an arbitrary, despotic or oppressive manner.

F. Cooperatives. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development [Sec. 15, Art. XII]. Read Republic Act No. 6939 [An Act Creating the Cooperative Development Authority].¹

1. In *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative*, G.R. No. 137489, May 29, 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.

G. Monopolies.

1. Policy: 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 [*Sec. 19, Art. XII*].

a) A monopoly is “a privilege or peculiar advantage vested in one or 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 level of State regulation than an ordinary business undertaking [*Agan, Jr. v. PIATCO, supra.*]. The Constitution does not absolutely prohibit monopolies. Thus, for example, an award for stevedoring and arrastre services to only one corporation is valid [*Philippine Port Authority v. Mendoza, 138 SCRA 496*].

b) Be that as it may, in *Tatad v. Secretary, Department of Energy, G.R. No. 124360, November 5, 1997*, the Supreme Court declared that Sec. 19, Art. XII, 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 of unmitigated monopolies. A market controlled by one player (monopoly) or dominated by a handful of players (oligopoly) is hardly the market where honest-to-goodness competition will prevail. In this case, it cannot be denied that our downstream oil industry is operated and controlled by an oligopoly, foreign oligopoly at that. So, if only to help the many 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 R.A. 8180 be repealed completely. See also *Energy Regulatory Board v. Court of Appeals, G.R. No. 113079, April 20, 2001*.

c) However, in *Tanada v. Angara, 272 SCRA 18*, the Supreme Court said that the World Trade Organization (WTO) Agreement does not violate

Sec. 19, Art. II, nor Secs. 19 and 12, Art. XII, because these sections should be read and understood in relation to Secs. 1 and 13, Art. XII, which require 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". Note, further, ***Association of Philippine Coconut Desiccators v. Philippine Coconut Authority, G.R. No. 110526, February 10, 1998***, where 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 Secs. 6 and 19, Art. XII.

d) Thus, in ***Pharmaceutical and Health Care Association of the Philippines v. Duque, G.R. No. 173034, October 9, 2007***, the Court said that the framers of the Constitution were well aware that trade must be subjected to some form of regulation for the public good. Public interest must be held over business interests. In ***Pest Management Association of the Philippines v. Fertilizer and Pesticide Authority, G.R. No. 156041, February 21, 2007***, it was held that "free enterprise does not call for the removal of protective regulations; it must be clearly explained and proven by competent evidence just exactly how such protective regulation would result in restraint of trade.

H. Central Monetary Authority. 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, x x x 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, x x x Until Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority [**Sec. 20, Art. XIII**]. Read R.A. 7653.

XVI. SOCIAL JUSTICE AND HUMAN

A. Policy Statement. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments [*Sec. 1, Art. XIII*]. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance [*Sec 2, Art. XIII*].

1. While the pursuit of social justice can have revolutionary effect, it cannot justify breaking the law. While the State is mandated to promote social justice and to maintain adequate social services in the field of housing, this cannot be interpreted to mean that “squatting” has been legalized. The State’s solicitude for the destitute and the have-nots does not mean it should tolerate usurpation of property, public or private [*Astudillo v. Board of Directors PHHC 73 SCRA 15*, ,

B. Labor. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. The State shall promote the principle of shared responsibility between the workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth [*Sec. 3, Art. XIII*],

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1. In SSS *Employees v. Court of Appeals*, 175 SCRA 686, it was held that employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages to pressure the Government to accede to their demands. In *Bangalisan v. Court of Appeals*, G.R. No. 124678, July 23, 1997, it was held that the ability to strike is not essential to the right to association!

and that the right of the sovereign to prohibit strikers or work stoppages was clearly recognized at common law. In **JMM Promotion and Management v. Court of Appeals, 260 SCRA 319**, the Supreme Court said that obviously, protection to labor does not mean promotion of employment alone.

C. Agrarian and Natural Resources Reform. Read Secs. 4-8, Art. XIII.

1. In **Association of Small Landowners v. Secretary of Agrarian Reform, supra.**, the constitutionality of the Comprehensive Agrarian Reform Law was upheld. In **Maddumba v. GSIS, 182 SCRA 281**, it was held that the GSIS may be compelled to accept Land Bank bonds at their face value in payment for a residential house and lot purchased by the bondholder from the GSIS; the value of these bonds cannot be diminished by any direct or indirect act, particularly since these bonds are fully guaranteed by the Government of the Philippines.

D. Urban Land and Housing Reform. “The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such programs the State shall respect the rights of small property owners” [**Sec. 9, Art. XU**], “Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be located” [**Sec. 10, Art. XIII**]. Read also R.A. 7279 [Urban Development and Housing Act].

1. The constitutional requirement that the eviction of squatters and the demolition of their shanties shall be done in accordance with law does not mean that the validity or legality of the demolition or eviction hinges on the existence of a resettlement area designated or earmarked by the Government [**People v. Leachon, G.R. No. 108725, September 25, 1998**].²

2. In **Filstream International, Inc. v. Court of Appeals, 284 SCRA 716**, where the Supreme Court took judicial notice of the fact that urban land reform has become a paramount task of Government in view of the acute shortage of decent housing in urban areas, particularly in Metro Manila. Nevertheless, local government units are not given an unbridled authority when exercising this power in pursuit of solutions to these problems. The basic rules still have to be followed, i.e., Sec. 1 and Sec. 9, Art. III of the

Sec. 19 of the Local Government Code imposes certain restrictions on the exercise of the power of eminent domain. R.A. 7279 provides the order in which lands may be acquired for socialized housing, and very explicit in Secs. 9 and 10 thereof is the fact that privately owned lands rank last in the order of priority for purposes of socialized housing.

3. In *City of Mandaluyong v. Francisco, G.R. No. 137152, January 29, 2001*, the Supreme Court reiterated that under RA 7279, lands for socialized housing are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered, abandoned or idle lands; (4) lands within the declare Areas for Priority Development, Zonal Improvement Program sites, Slum Improvement and Resettlement sites which have not yet been acquired; (5) BLISS sites which have not yet been acquired, and (6) privately-owned lands. The mode of expropriation is subject to two conditions: (a) it shall be resorted to only when the other modes of acquisition have been exhausted; and (b) parcels owned by small property owners are exempt from such acquisition.

a) Small property owners are [1] owners of residential lands with an area not more than 300 square meters in urbanized cities and not more than 800 square meters in other urban areas; and [2] they do not own residential property other than the same. In this case, the respondents fall within the classification of small property owners.⁴

4. In *Solanda Enterprises v. Court of Appeals, G.R. No. 123479, April 14, 1999*, it was held that the urban tenant's right of first refusal (pre-emptive right) under P.D. 1517, can be exercised only where the disputed land is situated in an area declared to be an area for priority development (APD) and an urban land reform zone (ULRZ).

E. Health. Read Secs. 11-13, Art. XIII.

F. Women. Read Sec. 14, Art. XIII. See *Philippine Telegraph and Telephone Co. v. NLRC, G.R. No. 118978, May 23, 1997* (discussed in Sec. 14, Art. II).

G. People's Organizations. Read Secs. 15-16, Art. XIII.

H. Human Rights.

1. **The Commission on Human Rights.** Composed of a Chairman and four members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.

a) The power to appoint the Chairman and members of the Commission is vested in the President of the Philippines, without need of confirmation by the Commission on Appointments [*Mary Concepcion Bautista v. Salonga, supra.*].

b) The Commission on Human Rights does not enjoy fiscal autonomy. It does not belong to the species of constitutional commissions under Art. IX of the Constitution [*Commission on Human Rights Employees Association v. Commission on Human Rights, G.R. No. 155336, November 25, 2004*],

2. Powers and Functions of the Commission. Read Sec. 18, Art. XIII.

a) In *Carino v. Commission on Human Rights, G.R. No. 96681, December 2, 1991*, on the question of whether or not the Commission on Human Rights has jurisdiction or adjudicatory powers over certain specific types of cases, like alleged human rights violations involving civil or political rights, the Supreme Court said that it does not; that "it was not meant by the fundamental law to be another court or quasi-judicial agency in this country, or duplicate much less take over the functions of the latter". It is conceded, however, that the Commission may investigate, i.e., receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. "But fact finding is not adjudication, and cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or official; the function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking". Having merely the power to investigate, the Commission cannot and should not "try and resolve on the merits" the matters involved in Striking Teachers HRC Case 90775, as it has announced it means to do; and it cannot do so even if there be a claim that in the administrative disciplinary proceedings against the teachers in question, initiated and conducted by the DECS, their human rights, or civil or political rights had been transgressed.

b) The Commission on Human Rights, not being a court of justice, cannot issue writs of injunction or a restraining order against supposed violators of human rights [*EPZA v. Commission on Human Rights, 208 SCRA 125*].

c) In *Simon v. Commission on Human Rights, 229 SCRA 117*, the Supreme Court ruled that evicting squatters is not a violation of human rights. Also reiterated was the rule that the CHR has no jurisdiction to issue the "order to desist" (a semantic interplay of a restraining order) inasmuch as such order is not investigatorial in character but prescinds from an adjudicatory power it does not possess.

XVII. EDUCATION, SCIENCE AND TECHNOLOGY, ARTS,

A. State Policy: The State shall give priority to education, science and technology, arts, culture and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development [**Sec. 17, Art. III.**]

1. **Sec. 1, Art. XIV:** The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

a) In ***Tablarin v. Gutierrez*, 154 SCRA 730**, the Supreme Court upheld the constitutionality of the National Medical Admission Test (NMAT) as a requirement for admission to medical school. The NMAT does not violate the right of the citizens to quality education at all levels; in fact, it ensures quality education for future doctors, and protects public health by making sure of the competence of future medical practitioners. In ***DECS v. San Diego*, 180 SCRA 534**, the regulation that a person who has thrice failed the NMAT is not entitled to take it again was likewise upheld.

b) 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. But like all rights and freedoms guaranteed by the Charter, their exercise may be so regulated pursuant to the police power of the State to safeguard health, morals, peace, education, order, safety and general welfare of the people. 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, to protect the public from the potentially deadly effects of incompetence and ignorance. In this case, the Professional Regulation Commission (Board of Medicine) observed that strangely, the unusually high ratings in the licensure examination were true only for Fatima College examinees. Verily, to be granted the privilege to practice medicine, the applicant must show that he possesses all the qualifications and none of the disqualifications. Furthermore, it must appear that he has fully complied with all the conditions and requirements imposed by the law and the licensing authority. Should doubt taint or mar the compliance as being less than satisfactory, then the privilege will not issue. Thus, without a definite showing that the aforesaid requirements and conditions have been satisfactorily met, the courts may not grant the writ of mandamus.

to secure said privilege without thwarting the legislative will [*Professional Regulation Commission v. De Guzman, G.R. No. 144681, June 21, 2004*],

c) In *Philippine Merchant Marine School v. Court of Appeals, supra.*, 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.

2. Constitutional mandate for the State to establish adequate and relevant education, free public elementary and high school education, scholarship grants and loan programs, out-of-school study programs, and adult education. Read **Sec. 2, Art. XIV.**

3. Constitutional objectives of education: Inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency [**Sec. 3 (2), Art. XIV.**].

4. **Optional religious instruction.** Option expressed in writing by parent or guardian; public elementary and high schools; within regular class hours; by instructors designated or approved by religious authorities; without additional cost to the Government [**Sec. 3(3), Art. XIV.**].

5. **Educational Institutions.**

a) **Ownership.** Solely by Filipino citizens or corporations 60% Filipino-owned, except those established by religious groups or mission boards, but Congress may increase required Filipino equity participation [**Sec. 4(2), Art. XIV.**],

b) **Control and administration.** Vested in citizens of the Philippines [*id.*].

c) **Alien schools.** No educational institution shall be established exclusively for aliens, and no group of aliens shall comprise more than 1/3 of the enrolment in any school, except schools for foreign diplomatic personnel and their dependents, and for other foreign temporary residents [*id.*].

d) **Tax exemptions.** All revenue and assets of non-stock, nonprofit educational institution --- as well as all grants, endowments, donations

and contributions — used actually, directly and exclusively for educational purposes, shall be exempt from taxes and duties [**Sec. 4(3), Art. XIV.**]

6. **Highest budgetary priority to education [Sec. 5, Art. XIV].** This provision has been construed to be merely directory; it does not follow that the hands of Congress be so hamstrung as to deprive it of the power to respond to the imperatives of national interest and the attainment of other state policies and objectives [*Guingona v. Carague*, 196 SCRA 221; *Philippine Constitution Association v. Enriquez, supra.*].

B. Academic Freedom. Academic freedom shall be enjoyed in all institutions of higher learning [**Sec. 5(2), Art. XIV.**] Colleges, publicly- or privately-owned, if they offer collegiate courses, enjoy academic freedom.

1. **Two Views:**

a) From the standpoint of the educational institution: The freedom of the university to determine “who may teach; what may be taught, how it shall be taught; and who may be admitted to study” [*Sweezy v. State of New Hampshire*, 354 U.S. 234].

i) Thus, in *Miriam College Foundation v. Court of Appeals*, G.R. No. 127930, November 15, 2000, it was held that if the school has the freedom to determine whom to admit, logic dictates that it also has the right to determine whom to exclude or expel, as well as to impose lesser sanctions such as suspension. While under the Education Act of 1982, students have the right to “freely choose their field of study subject to existing curricula, and to continue their course therein up to graduation”, such right is subject to the established academic and disciplinary standards laid down by the academic institution.

b) From the standpoint of the members of the academe: The freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be completely incompetent or contrary to professional ethics [*Frank Lovejoy, Encyclopedia of Social Science*, p. 384]. , i)

i) In *Camacho v. Coresis*, G.R. No. 134372, August 22, 2002, the Supreme Court upheld the action of the Ombudsman investigator in dismissing the administrative complaint against the professor on the ground

of academic freedom. Dr. Daleon's teaching style, which was validated by the action of the University Board of Regents, is bolstered by the constitutional guarantee on academic freedom. As applied in this case, academic freedom clothes Dr. Daleon with the widest latitude to innovate and experiment on the method of teaching which is most fitting to his students (graduate students, at that), subject only to the rules and policies of the University.

2. **Limitations: [Kay v. Board of Higher Education of New York, 173 Miss 943]:**

- a) The dominant police power of the State; and
- b) The social interests of the community.

3. Cases:

a) In **Board of Medical Education v. Judge Alfonso**, 176 SCRA 304, the Supreme Court sustained the decision of the Board of Medical Education in closing the Philippine Muslim-Christian College of Medicine for being "inadequate".

b) In **Capitol Medical Center v. Court of Appeals**, 178 SCRA 493, the closure of the nursing school was upheld, after due notice to the DECS, when its teachers and students declared a strike, refusing to hold classes and take examinations. The school may not be forced to reopen at the instance of the striking students. In **University of the Philippines v. Judge Ayson**, 176 SCRA 571, the Court also sustained the closure of the U.P. Baguio High School, on the ground that U.P. was set up as a tertiary institution and that the High School was set up only as an incident to its tertiary functions.

c) In **Non v. Dames**, 185 SCRA 523, the Supreme Court reversed its ruling in **Alcuaz v. PSBA**, 161 SCRA 7, declaring that the "termination of contract" theory in Alcuaz can no longer be used as a valid ground to deny readmission or re-enrolment to students who had led or participated in student mass actions against the school. The Court held that the students do not shed their constitutionally-protected rights of free expression at the school gates. Cited with approval were the rulings in **Malabanan v. Ramento**, 129 SCRA 359, along with **Villar v. Technological Institute of the Philippines**, 135 SCRA 706; **Arreza v. Gregorio Araneta University Foundation**, 137 SCRA 94; and **Guzman v. National University**, 142 SCRA 699. Accordingly, the only valid grounds to deny readmission of students are academic deficiency and breach of the school's reasonable rules of conduct. Be that as it may, in imposing disciplinary sanctions on students, it was held in Guzman (reiterated in **Ateneo de Manila University v. Capulong**, *supra*) that the following minimum

standards of procedural due process must be satisfied: (i) the students must be informed in writing of the nature and cause of the accusation against them; (ii) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (iii) they shall be informed of the evidence against them; (iv) they shall have the right to adduce evidence in their own behalf; and (v) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case. Held inapplicable to this case are the rulings in *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 68 SCRA 277 [where the issue was whether a female lay student had the right to compel a seminary for the priesthood to admit her for theological studies leading to a degree], and *Tangonan v. Pano*, 135 SCRA 245 [where the issue was whether a nursing student, who was admitted on probation and who failed in her nursing subjects, may compel her school to readmit her for enrolment].

d) In *Tan v. Court of Appeals*, 199 SCRA 212, which involved a bitter conflict between the administrators of Grace Christian High School and the parents of some students on matters of school policy, the Supreme Court said that the "maintenance of a morally conducive and orderly educational environment will be seriously imperilled if, under the circumstances of the case, Grace Christian High School is forced to admit petitioners' children and to reintegrate them into the student body.

e) In *University of San Carlos v. Court of Appeals*, 166 SCRA 570, the Court held that it is within the sound discretion of the university to determine whether a student may be conferred graduation honors, considering that the student had incurred a failing grade in an earlier course she took in school.

f) In *Lupangco v. Court of Appeals*, 160 SCRA 848, Resolution No. 105 of the Professional Regulation Commission prohibiting examinees for the accountancy licensure examinations from attending "any review class, briefing, conference or the like" or to "receive any hand-out, review material or any tip" from any school, etc., was held to have violated the academic freedom of the schools concerned. PRC cannot interfere with the conduct of review that review schools and centers believe would best enable their enrolees to meet the standards required before becoming full-fledged public accountants.

g) In *Reyes v. Court of Appeals*, 194 SCRA 402, the Supreme Court ruled that under the U.P. Charter, the power to fix admission requirements is vested in the University Council of the autonomous campus, which is composed of the President of the University of the Philippines and of all instructors holding the rank of professor, associate professor or assistant professor. Consequently, the University Council alone has the right to protest against any unauthorized

exercise of its power. Petitioners cannot impugn the directives of the Board of Regents on the ground of academic freedom inasmuch as their rights as university teachers remain unaffected.

h) In ***Cagayan Capitol College v. NLRC, 189 SCRA 658***, it was held that while DECS regulations prescribe a maximum of three years probation period for teachers, the termination of the three-year period does not result in the automatic permanent status for the teacher. It must be conditioned on a showing that the teacher's services during the probationary period was satisfactory in accordance with the employer's standards. The prerogative of the school to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom and constitutional autonomy which give educational institutions the right to choose who should teach.

i) In ***Isabelo v. Court of Appeals, 227 SCRA 591***, it was held that academic freedom was never meant to be unbridled license; it is a privilege which assumes the correlative duty to exercise it responsibly. Thus, where the student's expulsion was disproportionate to his having unit deficiencies in his CMT course, there is reason to believe the petitioner's claim that the school's action was strongly influenced by the student's participation in questioning PHCR's application for tuition fee increase.

j) In ***U.P. Board of Regents v. William, G.R. No. 134625, August 31, 1999***, it was held that where it is shown that the conferment of an honor or distinction was obtained through fraud, the university has the right to revoke or withdraw the honor or distinction conferred. This right of the university does not terminate upon the "graduation" of the student, because it is precisely the "graduation" of such student which is in question. Wide, indeed, is the sphere of autonomy granted to institutions of higher learning, for the constitutional grant of academic freedom "is not to be construed in a niggardly manner or in a grudging fashion".

k) In ***University of the Philippines and Alfredo de Torres v. Civil Service Commission, G.R. No. 132860, April 3, 2001***, the Supreme Court sustained the primacy of academic freedom over Civil Service rules on AWOL, stressing that when the UP opted to retain private petitioner and even promoted him despite his absence, the University was exercising its freedom to choose who may teach or who may continue to teach in its faculty. Even in light of provisions of the Civil Service Law, the respondent Commission had no authority to dictate to UP or any institution of higher learning the outright dismissal of its personnel.

C. Language.

1. The national language of the Philippines is Filipino.
2. For purposes of communication and instruction, the official languages are Filipino and, until otherwise provided by law, English.
3. The regional languages are the auxiliary official languages in the regions and shall serve as ancillary media of instruction therein.
4. Spanish and Arabic shall be promoted on a voluntary and optional basis.
5. The Constitution shall be promulgated in Filipino and English and shall be translated into major regional languages, Arabic and Spanish.

D. Science and Technology. Read Secs. 10-13, Art. XIV.

E. Arts and Culture. Read Secs. 14-18, Art. XIV.

F. Sports. Read Sec. 19, Art. XIV.

XVIII. THE FAMILY

[Read Secs. 1-4, Art. XV]

XIX. GENERAL PROVISIONS

A. Flag. "The flag of the Philippines shall be red, white and blue, with a sun and three stars, as consecrated and honoured by the people and recognized by law" [Sec. 1, Art. XVI].

B. Name. "The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum" [Sec. 2, Art. XVI].

C. Armed Forces of the Philippines. "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 [Sec. 4, Art. XVI].

1. All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution [Sec. 5(1), Art. XVI].

2. Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. 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 [Sec. 5(3), Art. XVI].

3. No member of the armed forces in the active service shall, at any time, be appointed or designated in any capacity to any civilian position in the Government, including government-owned or controlled corporations or any of their subsidiaries [Sec. 5(4), Art. XVI].

4. Laws on retirement of military officers shall not allow extension of their services [Sec. 5(5), Art. XVI].⁵

5. The officers and men of the regular force of the armed forces shall be recruited proportionately from all provinces and cities as far as practicable [Sec. 5(6), Art. XVI].

D. National Police Force. "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law" [**Sec. 6, Art. XVI**].

1. In **Carpio v. Executive Secretary, 206 SCRA 290**, the Supreme Court upheld the constitutionality of R.A. 6975, establishing the Philippine National Police under a reorganized department, the Department of Interior and Local Government.

2. In **Alunan v. Asuncion, G.R. No. 115824, January 28, 2000**, the Supreme Court said that R.A. 6975 created the new Philippine National Police which absorbed the members of the former National Police Commission, Philippine Constabulary and the Integrated National Police, all three of which were accordingly abolished. The law had the effect of revising the whole police force system and substituting a new unified one in its place.

E. Mass Media and Advertising Industry.

1. **Mass media.** Ownership shall be limited to citizens of the Philippines, or corporations wholly-owned and managed by such citizens. Congress shall regulate or prohibit monopolies in commercial mass media. [**Sec. 11(1) Art XVI**].

2. **Advertising industry.** Only Filipino citizens or corporations or associations at least 70% Filipino-owned shall be allowed to engage in the advertising industry. All executives and managing officers of such entities must be citizens of the Philippines [**Sec. 11(2), Art. XVI**].

a) Advertising entities affected shall have five (5) years from the ratification of this Constitution to comply on a graduated and proportionate basis with the minimum Filipino ownership requirement [**Sec. 23, Art. XVIII**].

XX. TRANSITORY PROVISIONS

A. Elections.

1. First elections under this Constitution of members of Congress shall be held on the second Monday of May, 1987. First local elections shall be held on a date to be determined by the President [**Sec. 1, Art. XVIII**].

2. Synchronization of elections. The members of Congress and the local officials first elected shall serve until noon of June 30, 1992 [Sec. 2, Art. XVIII]. The six year term of the incumbent President and Vice President elected in the February 7, 1986 elections is extended until noon of June 30, 1992 [**Sec. 5, Art. XVIII**].

a) The first regular election for President and Vice President under this Constitution shall be held on the second Monday of May, 1992 [**Sec. 5, Art. XVIII**].

b) In *Osmena v. Commission on Elections*, 199 SCRA 750, the Supreme Court interpreted this to mean that the elections for President and Vice President, Senators, Members of the House of Representatives and local officials must be synchronized in 1992. Accordingly, R.A. 7056, which provided for de-synchronized elections, was declared unconstitutional.

B. Existing Laws and Treaties.

1. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with the Constitution shall remain operative until amended, repealed or revoked [**Sec. 3, Art. XVIII**].

a) In *People v. Gacott*, 242 SCRA 514, it was held that President Marcos' Letter of Implementation No. 2, dated March 18, 1972, which abolished the Anti-Dummy Board, not having been revised, revoked or repealed, continues to have the force and effect of law. Thus, the accused may not validly claim that the power to prosecute violations of the Anti-Dummy Law is vested exclusively in the Anti-Dummy Board and the City Prosecutor is without authority to file and prosecute the same.²

2. All existing treaties or international agreements which have not been ratified shall not be renewed or extended without the concurrence of at least 2/3 of all the members of the Senate [**Sec. 4, Art. XVIII**].

a) After the expiration in 1991 of the Agreement between the Philippines and the United States, foreign military bases shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State [**Sec. 25, Art. XVIII**].

b) In ***Bayan v. Executive Secretary, G.R. No. 138570, October 10, 2000***, the Supreme Court ruled that the Philippine Government had complied with the constitution in that the Visiting Forces Agreement was concurred in by the Philippine Senate, thus following the requirement of Sec. 21, Art. VII. But the Republic of the Philippines cannot require the United States to submit the agreement to the US Senate for concurrence, because that would constitute a very strict interpretation of the phrase, "recognized as a treaty". Moreover, it is inconsequential whether the US treats the VFA only as an executive agreement because, under international law, an executive agreement is as binding as a treaty.

C. Reserved Executive Powers.

1. Until a law is passed, the President may fill by appointment from a list of nominees by the respective sectors, the seats reserved for sectoral representatives in par. (1), Sec. 5, Art. VI [**Sec. 7, Art. XVIII**].

2. Until otherwise provided by Congress, the President may constitute the Metropolitan Authority to be composed of the heads of all local government units comprising the Metropolitan Manila Area [**Sec. 8, Art. XVIII**].

D. Career Civil Service.

1. Career civil service employees separated from the service not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986, and the reorganization following the ratification of the Constitution shall be entitled to appropriate separation pay, and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation [**Sec. 16, Art. XVIII**],

a) In lieu of separation pay, at the option of the employees, they may be considered for employment in the government, or in any of its subdivisions, etc..

b) This provision shall also apply to career officers whose resignation, tendered in line with the existing policy, had been accepted. See: ***Ortiz v. Comelec, 162 SCRA 812***.

E. Sequestration.

1. Authority to issue sequestration or freeze orders relative to the recovery of ill-gotten wealth shall remain operative for not more than 18 months after the ratification of this Constitution. However, Congress may extend such period.

a) Sequestration or freeze orders shall be issued upon showing of a *prima facie* case. The corresponding judicial action shall be filed within 6 months from ratification of this Constitution, or, if issued after ratification, within 6 months from such issue. The order is deemed automatically lifted if no judicial action or proceeding is commenced as provided herein.

i) In *Republic v. Sandiganbayan*, 240 SCRA 376, the Court said that there is no particular description or specification of the kind or character of "judicial action or proceeding", much less an explicit requirement for the impleading of the corporations sequestered or of the ostensible owners of the property suspected to be ill-gotten. The only qualifying requirement in the Constitution is that the action or proceeding be filed "for" orders of sequestration, freezing or provisional take-over. What is apparently contemplated is that the action or proceeding must concern or involve the matter of sequestration, freezing or provisional take-over of specific property — and should have, as objective, the demonstration by competent evidence that the property is indeed "ill-gotten wealth" over which the government has a legitimate claim for recovery and other relief. In *PCGG v. Sandiganbayan*, G.R. No. 125788, June 5, 1998, it was held that the mere issuance of the writ of sequestration, without the corresponding service thereof, within the 18-month period, does not comply with the constitutional requirement.

ii) For failure of the PCGG to commence the proper judicial action or to implead the respondents therein within the period prescribed by the Constitution, the sequestration orders issued against the respondents were deemed automatically lifted. But the lifting of the sequestration orders does not ipso facto mean that sequestered property are not ill-gotten. The effect of the lifting will merely be the termination of the role of government as conservator of the property [*PCGG v. Sandiganbayan*, G.R. Nos. 119609-10, September 21, 2001].

iii) In *Republic v. Sandiganbayan*, 258 SCRA 685, the Supreme Court held that a writ of sequestration may be issued only upon authority of at least two (2) PCGG Commissioners. Accordingly, the sequestration order issued by the PCGG Task Force Head in Region VIII is not valid, not only because the Task Force Head did not have specific authority to act on behalf of the Commission, but also because, even assuming that he was authorized,

PCGG may not validly delegate its authority to sequester. This was reiterated in *Republic v. Sandiganbayan, G.R. No. 119292, July 31, 1998*, where it was held that in Republic v. Provident, the sequestration order signed by only one Commissioner was considered valid only because the order was issued on March 19, 1986, before the promulgation of the PCGG Rules and Regulations requiring the signatures of two Commissioners.

b) In *Cojuangco v. Roxas, 195 SCRA 797*, the Supreme Court held that the PCGG cannot perform acts of strict ownership of sequestered property. The PCGG is a mere conservator. It may not vote the shares in a corporation and elect the members of the Board of Directors. The only conceivable exception is in a case of take-over of a business belonging to the government or whose capitalization comes from public funds but which landed in private hands such as in Bataan Shipyard and Engineering Corporation (BASECO). This ruling was reiterated in *Benedicto v. Board of Administrators, 207 SCRA 659*; *Antiporda v. Sandiganbayan, G.R. No. 116941, May 31, 2001* and *PCGG, Ocean Wireless Network, et al v. Sandiganbayan, G.R. No. 119609-10, September 21, 2001*.

i) Sequestration does not automatically deprive the stockholders of their right to vote their shares of stocks. Until the main sequestration case is resolved, the right to vote the sequestered shares of stocks of SMB depends on a two-tiered test, the guidelines of which are: [ia] Whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and [ib] Whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan [*PCGG v. Cojuangco, G.R. No. 133197, January 22, 1999*].

ii) The two-tiered test, however, does not apply in cases involving funds of “public character”. In such cases, the government is granted the authority to vote said shares, namely: [a] where government shares are taken over by private persons or entities who/which registered them in their own names; and [b] where the capitalization or shares that were acquired by public funds somehow landed in private hands [*Republic v. Sandiganbayan, G.R. No. 107789, April 30, 2003*].

c) The Sandiganbayan can review the validity of sequestration orders [*Republic v. Sandiganbayan, 258 SCRA 685*],²

2. In *Republic v. Sandiganbayan, 173 SCRA 72*, the Supreme Court held that in the absence of express prohibition, the rule on amicable settlements or compromise agreements in the Civil Code is applicable to PCGG cases pending before the Sandiganbayan.

a) The PCGG's authority to enter into compromise agreements involving ill-gotten wealth and to grant immunity in civil and criminal cases, without need of prior Congressional approval, was sustained anew in *Benedicto v. Board of Administrators*, 207 SCRA 659.

3. In *Romualdez v. Sandiganbayan*, 244 SCRA 152, upon the theory that Romualdez failed to file his annual statement of assets and liabilities from 1962-1985, the PCGG conducted a preliminary investigation, and finding a *prima facie* case, filed 24 identically-worded information. On the challenge made against the PCGG's authority to conduct such investigation and to file the corresponding criminal information, the Court said that for penal violations to fall within the jurisdiction of the PCGG under Sec. 2(a), E.O. No. 1, the following elements must concur: (a) It must relate to ill-gotten wealth; (b) of the late President Marcos, his immediate family, relatives, subordinates and close associates; (c) who took advantage of their public office and/or their power, authority, influence, connections or relationship. The other violations of the Anti-Graft Law not otherwise fulfilling these elements are not within the authority of PCGG to investigate, but within the jurisdiction of the Ombudsman and other duly authorized investigating agencies.

a) However, the invalid preliminary investigation did not impair the validity of the criminal information or otherwise render them defective; much less did not affect the jurisdiction of the Court; the only effect being the imposition on the latter of the obligation to suspend the proceedings and to require the holding of preliminary investigation [*Romualdez v. Sandiganbayan, supra*.].

b) A mere allegation in the anti-graft complaint that the accused is a relative of then President Marcos will not suffice to enable the PCGG to take cognizance of the case. As held in *Cruz v. Sandiganbayan*, 194 SCRA 474, there must, in addition, be a showing that the accused has unlawfully accumulated wealth by virtue of such close relation with the former President. In this case, it is clear from the allegations that Araneta used his power, influence, connections or relationship as son-in-law of the late President Marcos and, that by reason of the manner in which the acquisition was effected, the assets contemplated in the complaint are ill-gotten [*Araneta III v. Sandiganbayan*, 242 SCRA 482].⁴

4. In *PAGCOR v. Court of Appeals*, G.R. No. 108838, July 14, 1997, the Supreme Court held that while it is true that the Philippine Casino Operators Corporation (PCOC) was sequestered, the fact of sequestration alone did not automatically oust the Regional Trial Court of its jurisdiction under B.P. 129 to decide the question of ownership of the gaming and

to be recovered by PAGCOR. In order that the Sandiganbayan's exclusive jurisdiction may be invoked, the PCGG must be a party to the suit. The instant case involves only PAGCOR, PCOC and Marcelo.

5. The Office of the Solicitor General may validly call the PCGG for assistance and ask it to respond to a motion for a bill of particulars, considering that PCGG has the complete records of the case and, being in charge of the investigation, is more knowledgeable and better informed of the facts of the case than the OSG [*Virata v. Sandiganbayan*, G.R. No. 114331, May 27, 1997] .

ADMINISTRATIVE LAW

I. GENERAL PRINCIPLES

A. Administrative Law.

1. *Defined.* That branch of public law which fixes the organization and determines the competence of administrative authorities and indicates to the individual remedies for the violation of his rights.

2. *Kinds:*

- a) Statutes setting up administrative authorities.
- b) Rules, regulations or orders of such administrative authorities promulgated pursuant to the purposes for which they were created.
- c) Determinations, decisions and orders of such administrative authorities made in the settlement of controversies arising in their particular fields.
- d) Body of doctrines and decisions dealing with the creation, operation and effect of determinations and regulations of such administrative authorities.

3. *Administration.*

a) Meaning. Understood in two different senses:

- i) As a function: the execution, in non-judicial matters, of the law or will of the State as expressed by competent authority.
- ii) As an organization: that group or aggregate of persons in whose hands the reins of government are for the time being.

b) Distinguished from government.

c) Kinds:

- i) Internal: legal side of public administration, e.g., matters concerning personnel, fiscal and planning activities.
- ii) External: deals with problems of government regulations, e.g., regulation of lawful calling or profession, industries or businesses.

B. Administrative Bodies or Agencies

1. *Defined.* Organ of government, other than a court and other than a legislature, which affects the rights of private parties either through adjudication or rule-making.

2. *Creation.* They are created either by:

- a) Constitutional provision;
- b) Legislative enactment; or
- c) Authority of law.

3. *Criterion:* A body or agency is administrative where its function is primarily regulatory even if it conducts hearings and determines controversies to carry out its regulatory duty. On its rule-making authority, it is administrative when it does not have discretion to determine what the law shall be but merely prescribes details for the enforcement of the law.

4. *Types:*

- a) Bodies set up to function in situations where the government is offering some gratuity, grant or special privilege, e.g., Bureau of Lands.
- b) Bodies set up to function in situations wherein the government is seeking to carry on certain of the actual business of government, e.g., BIR.
- c) Bodies set up to function in situations wherein the government is performing some business service for the public, e.g., MWSS.
- d) Bodies set up to function in situations wherein the government is seeking to regulate business affected with public interest, e.g., LTFRB.
- e) Bodies set up to function in situations wherein the government is seeking under the police power to regulate private business and individuals, e.g., SEC.
- f) Bodies set up to function in situations wherein the government is seeking to adjust individual controversies because of a strong social policy involved, e.g., ECC.
- g) Bodies set up to make the government a private party, e.g., GSIS.

II. POWERS OF ADMINISTRATIVE BODIES

A. Powers of Administrative Bodies.

1. Quasi-legislative or rule-making power;
2. Quasi-judicial or adjudicatory power; and
3. Determinative powers

B. Quasi-legislative power.

1. *Nature.* This is the exercise of delegated legislative power, involving no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself. In *Holy Spirit Homeowners Association v. Secretary Defensor*, G.R. No. 163980, August 3, 2006, the Supreme Court said that quasi-legislative power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separation of powers.

a) Rules and regulations issued by administrative authorities pursuant to the powers delegated to them have the force and effect of law; they are binding on all persons subject to them, and the courts will take judicial notice of them.

b) Both Letters of Instruction and Executive Orders are presidential issuances; one may repeal or otherwise alter, modify or amend the other, depending on which comes later [*Philippine Association of Service Exporters v. Torres*, 225 SCRA 417].

c) It may be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. Thus, administrative regulations cannot extend the law or amend a legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law [*Land Bank v. Court of Appeals*, 249 SCRA 149]. Indeed, administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant nor to modify, the law [*Commissioner of Internal Revenue v. Court of Appeals*, 240 SCRA 368].

d) It is axiomatic that an administrative agency like the Philippine Ports Authority has no discretion whether or not to implement a law. Its duty is

to enforce the law. Thus, if there is a conflict between PPA circulars and a law like EO 1088, the latter prevails [*Eastern Shipping Lines v. Court of Appeals G. R. No. 116356, June 29, 1998*].

e) An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of Government. It cannot be argued that Administrative Order No. 308 (prescribing a National Computerized Identification Reference System) merely implements the Administrative Code of 1987. Such a national computerized identification reference system requires a delicate adjustment of various contending State policies, the primacy of national security, the extent of privacy against dossier-gathering by the Government, and the choice of policies. It deals with a subject which should be covered by a law, not just an administrative order [*Ople v. Torres, 293 SCR A 141*].

2. Kinds of Administrative Rules or Regulations

a) Supplementary or detailed legislation. They are rules and regulations "to fix the details" in the execution and enforcement of a policy set out in the law, e.g., Rules and Regulations Implementing the Labor Code.

t>) Interpretative legislation. They are rules and regulations construing or interpreting the provisions of a statute to be enforced and they are binding on all concerned until they are changed, e.g., BIR Circulars, CB circulars, etc.. They have the effect of law and are entitled to great respect; they have in their favor the presumption of legality [*Gonzalez v. Land Bank, 183 SCRA 520*]. The erroneous application of the law by public officers does not bar a subsequent correct application of the law [*Manila Jockey Club v. Court of Appeals, G.R. No. 103533, December 15, 1998*].

c) Contingent legislation. They are rules and regulations made by an administrative authority on the existence of certain facts or things upon which the enforcement of the law depends. See: *Cruz v. Youngberg, 56 Phil 234*.

3. Requisites for validity:

- a) Issued under authority of law. See: *Olsen v. Aldanese, 43 Phil 64..*
 - b) Within the scope and purview of the law.'
- i) The power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for

in the legislative enactment. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. However, administrative bodies are allowed, under their power of subordinate legislation, to implement the broad policies laid down in the statute by “filling in” the details. All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law [**Public Schools District Supervisors Association v. Hon. Edilberto de Jesus, G.R. No. 157299, June 19, 2006**].

ii) In **Land Bank v. Court of Appeals, 249 SCRA 149**, the Court nullified DAR Adm. Circular No. 9, which allowed the opening of a trust account in behalf of the landowner as compensation for the property taken, because Sec. 16 (e), R.A. 6657, is specific that the deposit must be made in “cash” or in “Land Bank bonds”. The implementing regulation cannot outweigh the clear provision of the law. See also **Cebu Oxygen & Acetylene Co. v. Drilon, 176 SCRA 24**.

iii) In **Romulo, Mabanta Law Office v. Home Development Mutual Fund, G.R. No. 131082, June 19, 2000**, the Supreme Court ruled that the HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to enforce and administer. Administrative issuances must not override, supplant or modify the law.

iv) Where the regulatory system has been set up by law, it is beyond the power of an administrative agency to dismantle it. Any change in policy must be made by the legislative department [**Association of Philippine Coconut Desiccators v. Philippine Coconut Authority, G.R. No. 110526, February 10, 1998**].

v) R.A. 8171 empowers the Secretary of Justice, in conjunction with the Secretary of Health and the Director of the Bureau of Corrections, to issue the necessary implementing rules and regulations. The rules, however, authorized the Director of the Bureau of Corrections to prepare a manual setting forth the details of the proceedings prior to, during and after the administration of the lethal injection on the convict. Because the rule did not provide for the approval of the said manual by the Secretary of Justice, considering that the Bureau of Corrections is merely a constituent unit of the Department of Justice and it is the Secretary of Justice who is granted rule-making authority under the law, the rule authorizing the Director of the Bureau of Corrections to promulgate said manual is invalid being an abdication of responsibility by the Secretary of Justice [**Echegaray v. Secretary of Justice, G.R. No. 132601, October 12, 1998**].

vi) In the same case, Sec. 17 of the rules and regulations implementing R.A. 8171 which provided that the death penalty shall not be inflicted upon a woman within three years next following the date of the sentence or while she is pregnant was declared invalid, the same being an impermissible contravention of Sec. 83 of the Revised Penal Code which provides that the death penalty shall not be inflicted upon a woman while she is pregnant or within one year after delivery.

c) Reasonable. See *Lupangco v. Court of Appeals, 160 SCRA 848.*

d) Publication in the Official Gazette or in a newspaper of general circulation, as provided in Executive Order No. 200. However, interpretative rules and regulations, or those merely internal in nature, or the so-called letters of instruction issued by administrative superiors concerning the rules and guidelines to be followed by their subordinates in the performance of their duties, may be simply posted in conspicuous places in the agency itself. Such posting already complies with the publication requirement. Publication must be in full, or it is no publication at all [*Tanada v. Tuvera, 146 SCRA 446*],

i) Thus, in *De Jesus v. Commission on Audit, G.R. No. 109023, August 12, 1998*, it was held that administrative rules and regulations the purpose of which is to enforce or implement an existing law pursuant to a valid delegation, must be published in the Official Gazette or in a newspaper of general circulation, except interpretative regulations and those merely internal in nature, i.e., regulating only the personnel of the administrative agency, not the general public. The same rule was upheld in *Caltex (Philippines) Inc. v. Court of Appeals, 292 SCRA 273*. Likewise, in *Philippine International Trading Corporation v. Commission on Audit, G.R. No. 132593, June 25, 1999*, it was held that the DBM Corporate Compensation Circular (DBM-CCC) No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees starting November 1, 1989, is not a mere interpretative or internal regulation, and must go through the requisite publication in the Official Gazette or in a newspaper of general circulation. The reissuance of the CCC and its submission for publication per letter to the National Printing Office on March 9, 1999, will not cure the defect precisely because publication is a condition precedent to its effectivity.

ii) In *Philippine Association of Service Exporters v. Torres, 212 SCRA 298*, DOLE Department Order No. 16-91 and POEA Memorandum Circulars Nos. 30 and 37, while recognized as valid exercise of police power as delegated to the executive department, were declared legally invalid,

defective and unenforceable for lack of proper publication and filing in the Office of the National Administrative Register (as required by Art. 5, Labor Code of the Philippines). This ruling was reiterated in *Philsa International Placement and Services Corporation v. Secretary of Labor and Employment*,

G. R. No. 103144, April 4, 2001, where POEA Memorandum Circular No. 2, Series of 1983, which provided the schedule of placement and documentation fees for private employment agencies, was declared ineffective because it was not published and filed with the National Administrative Register.

iii) In *Transaction Overseas Corporation v. Secretary of Labor, G.R. No. 109583, September 5, 1997*, on the question of the validity of the cancellation of the petitioner's license to recruit workers for overseas work because the Revised Rules of Penalties had not been filed with the University of the Philippines Law Center as required by the Administrative Code of 1987, the Supreme Court said that the Revised Rules of Penalties did not prescribe additional rules governing overseas employment but merely detailed the administrative sanctions for prohibited acts. Besides, the cancellation of the license was made under authority of Art. 35 of the Labor Code, not pursuant to the Revised Rules of Penalties.

4. Administrative rules with penal sanctions; additional requisites:

- a) The law must itself declare as punishable the violation of the administrative rule or regulation. See *People v. Maceren, 79 SCRA 450*.
- b) The law should define or fix the penalty for the violation of the administrative rule or regulation.

5. Necessity for notice and hearing.

a) There is no constitutional requirement for a hearing in the promulgation of a general regulation by an administrative body. Where the rule is procedural, or where the rules are, in effect, merely legal opinions, there is no notice required. Neither is notice required in the preparation of substantive rules where the class to be affected is large and the questions to be resolved involve the use of discretion committed to the rule-making body. In *Corona v. United Harbor Pilots Association of the Philippines, G.R. No. 111953, December 12, 1997*, the Supreme Court reiterated the rule that a prior hearing is not necessary for the issuance of an administrative rule or regulation.ⁱ⁾

i) However, see *Commissioner of Internal Revenue v. Court of Appeals, 261 SCRA 236*, where the Supreme Court distinguished between

administrative rules in the nature of subordinate legislation and those which are merely interpretative rules. An administrative rule in the nature of subordinate legislation is designed to implement a law by providing its details, and before it is adopted there must be a hearing under the Administrative Code of 1987. When an administrative rule substantially adds to or increases the burden of those concerned, an administrative agency must accord those directly affected a chance to be heard before its issuance. In this case, prior to the issuance of Revenue Memorandum Circular No. 37-93, the cigarettes manufactured by the respondent were in the category of locally-manufactured cigarettes not bearing a foreign brand. Had it not been for Revenue Memo Circular No. 37-93, the enactment of R.A. 7654 would not have resulted in a new tax rate upon the cigarettes manufactured by the respondent. The BIR did not simply interpret the law; it exercised quasi-legislative authority, and the requirements of notice, hearing and publication should not have been ignored.

b) In *Philippine Consumers Foundation v. Secretary, DECS, 153 SCRA 622*, it was held that the function of prescribing rates by an administrative agency may be either a legislative or an adjudicative function. If it were a legislative function, the grant of prior notice and hearing to the affected parties is not a requirement of due process. As regards rates prescribed by an administrative agency in the exercise of its quasi-judicial function, prior notice and hearing are essential to the validity of such rates. Where the rules and the rates are meant to apply to all enterprises of a given kind throughout the country, they may partake of a legislative character. But if they apply exclusively to a particular party, based upon a finding of fact, then its function is quasi-judicial in character.

c) In *Lina v. Carino, 221 SCRA 515*, the Supreme Court upheld the authority of the Secretary of Education to issue DECS Order No. 30, prescribing guidelines concerning increases in tuition and other school fees.

d) In *Maceda v. Energy Regulatory Board, 192 SCRA 363*, the Supreme Court declared that while under Executive Order No. 172, a hearing is indispensable, it does not preclude the Board from ordering, ex parte, a provisional increase subject to its final disposition of whether or not to make it permanent, to reduce or increase it further, or to deny the application. Sec. 3 (e) is akin to a temporary restraining order or a writ of preliminary attachment issued by the court, which are given *ex parte*, and which are subject to the resolution of the main case.

6

6. A petition for prohibition is not the proper remedy to assail Implementing Rules and Regulations issued in the exercise of quasi-legislative functions. Prohibition is an extraordinary writ directed against any

board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when the said proceedings are without or in excess of jurisdiction, or is accompanied by grave abuse of discretion, and there is no appeal or any other plain, speedy or adequate remedy in the ordinary course of law. Thus, prohibition lies against the exercise of judicial, quasi-judicial or ministerial functions, not against legislative or quasi-legislative functions *[Holy Spirit Homeowners Association v. Secretary Defensor, G.R. No. 163980, August 3, 2006]*,

C. Determinative Powers.

1. Enabling: to permit or allow something which the law undertakes to regulate, e.g., grant or denial of licenses to engage in a particular business.
2. Directing: illustrated by the power of assessment of the BIR or the Bureau of Customs.
3. Dispensing: to exempt from a general prohibition, or relieve an individual or corporation from an affirmative duty, e.g., authority of zoning boards to vary provisions of zoning ordinances, or the authority of the Acceptance Board of the Philippine Army to relieve certain persons from military training.
4. Examining: also called the investigatory power; consists in requiring production of books, papers, etc., the attendance of witnesses and compelling their testimony.
 - a) Power to compel attendance of witnesses not inherent in administrative body; but an administrative officer authorized to take testimony or evidence is deemed authorized to administer oath, summon witnesses, require production of documents, etc..
 - b) Power to punish contempt must be expressly granted to the administrative body; and when so granted, may be exercised only when administrative body is actually performing quasi-judicial functions. See *Guevara v. Commission on Elections, 104 Phil 268; Masangcay v. Commission on Elections, 6 SCRA 21; Carino v. Commission on Human Rights, 204 SCRA 483.*⁵
5. Summary: power to apply compulsion or force against persons or property to effectuate a legal purpose without a judicial warrant to authorize such action, e.g., in the fields of health inspections, abatement of nuisances, etc.

D. Quasi-judicial or adjudicatory power.

1. Proceedings partake of the character of judicial proceedings. Administrative body is normally granted the authority to promulgate its own rules of procedure, provided they do not increase, diminish or modify substantive rights, and subject to disapproval by the Supreme Court [Sec. 5(5), Art VIII, Constitution]. The requisites of procedural due process must be complied with.

2. Administrative due process

a) The requisites of administrative due process, as enumerated in *Ang Tibay v. CIR, 40 O.G. 7th Supp. 129* are:

- i) Right to a hearing;
- ii) Tribunal must consider evidence presented;
- iii) Decision must have something to support itself;
- iv) Evidence must be substantial;
- v) Decision must be based on the evidence adduced at the hearing, or at least contained in the record and disclosed to the parties;
- vi) The Board or its judges must act on its or their independent consideration of the facts and the law of the case, and not simply accept the views of a subordinate in arriving at a decision.
- vii) Decision must be rendered in such a manner that the parties to the controversy can know the various issues involved and the reasons for the decision rendered.

b) Cases:

i) In *Ute Paterok v. Bureau of Customs, 193 SCRA 132*, the Supreme Court held that in a forfeiture proceeding where the owner of the allegedly prohibited article is known, mere posting of the notice of hearing in the respondent's Bulletin Board does not constitute compliance with procedural due process.

ii) Due process demands that the person be duly informed of the charges against him. He cannot be convicted of an offense with which he was not charged. Administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings. The right to substantive and procedural due process is applicable in administrative proceedings [*Civil Service Commission v. Lucas, G.R. No. 127838, January 21, 1999*]. The essence of due process is that a party be afforded reasonable opportunity to be heard and to submit any evidence he

may have in support of his defense. In administrative proceedings such as the one at bench, 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; a formal or trial-type hearing is not, at all times, necessary [*Padilla v. Sto. Tomas*, 243 SCRA 155; *M. Ramirez Industries v. Secretary of Labor*, 266 SCRA 483; *Napolcom v. Bernabe*, G.R. No. 129943, May 12, 2000]. In *Arboleda v. NLRC*, G.R. No. 119509, February 11, 1999, the Supreme Court said that the essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. The requirement of notice and hearing in termination cases does not connote full adversarial proceedings, as actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. This is a procedural right which the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon. In *Calma v. Court of Appeals*, G.R. No. 122787, February 9, 1999, it was held that as long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with. In *Philippine Merchant Marine School v. Court of Appeals*, *supra*, the Court said that the facts clearly demonstrate that before the DECS issued the phase-out and closure orders, the petitioner was duly notified, warned and given several opportunities to correct its deficiencies and to comply with the pertinent orders and regulations. The petitioner had gone all the way up to the Office of the President to seek a reversal of the phaseout and closure orders. It cannot now claim that it did not have the opportunity to be heard. ■

iii) In *Lumiqued v. Exenea*, G.R. No. 117565, November 18, 1997, it was held that administrative due process does not necessarily require the assistance of counsel. But in *Gonzales v. NLRC and Ateneo de Davao University*, G.R. No. 125735, August 26, 1999, the Supreme Court held that there was a violation of administrative due process where the teacher was dismissed by the university without having been given full opportunity to confront the "witnesses" against her.

iv) In the evaluation by the Department of Foreign Affairs and the Department of Justice of a request for extradition, the prospective extraditee does not only face a clear and present danger of loss of property or employment, but of liberty itself, which may eventually lead to his forcible banishment to a foreign land. He is, therefore, entitled to the minimum requirements of notice and opportunity to be heard, as basic elements of due process [*Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000].

v) However, administrative due process cannot be fully equated to due process in the strict judicial sense [*Ocampo v. Office of the Ombudsman*,

G.R. No. 114683, January 18, 2000], The standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored; even in the absence of previous notice, there is no denial of due process as long as the parties are given the opportunity to be heard [*Adamson v. Amores*, 152 SCRA 237]. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek reconsideration of the action or ruling complained of [*De la Cruz v. Abille*, G.R. No. 130196, February 26, 2001], or an opportunity to explain one's side [*Pilipinas Loan Company v. Securities and Exchange Commission*, G.R. No. 104720, April 4, 2001].

vi) The Monetary Board, as an administrative agency, is legally bound to observe due process. In the case at bench, the Supreme Court held that the Monetary Board complied with all the requisites of administrative due process, as enumerated in Ang Tibay. As to petitioners' suspension, no notice was necessary because it was only preventive in nature [*Busuego v. Court of Appeals*, G.R. No. 95326, March 11, 1999].

vii) In *Globe Telecom v. National Telecommunications Commission*, G.R. No. 143964, July 26, 2004, the Supreme Court said that the assailed Order of NTC violated due process for failure to sufficiently explain the reason for the decision rendered, for being unsupported by substantial evidence, and for imputing violation to, and imposing a corresponding fine on, Globe, despite the absence of due notice and hearing which would have afforded Globe the right to present evidence on its behalf.

viii) The Manila International Airport Authority (MIAA) cannot validly raise, without prior notice and public hearing, the fees, charges and rates being paid by aviation entities doing business at the airport. The rate increases imposed are also ultra vires because, to begin with, it is the DOTC Secretary, not MIAA, who is authorized to increase the subject fees [*MIAA v. Airspan Corporation*, G.R. No. 157581, December 1, 2004],

ix) In *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, the Supreme Court found that Nicolas was not accorded the first requirement of administrative due process: the right to present his case and submit evidence in support thereof. Petitioner was not notified of the preliminary conference which would have afforded him the opportunity to appear and defend his rights, including the right to request a formal investigation. Substantial evidence — or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion — which is the quantum of proof necessary to prove a charge in an administrative case, was not met here.

x) 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. "To be heard" does not mean only verbal arguments in court; one may also be heard through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process [*Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005].

xi) In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. As long as the party was given the opportunity to defend his interests in due course, he was not denied due process. Moreover, technical rules of procedure and evidence are not strictly applied in administrative proceedings; administrative due process cannot be fully equated to due process in its strict judicial sense [*Civil Service Commission v. Court of Appeals*, G.R. No. 161086, November 24, 2006],

3. *Administrative determinations where notice and hearing are not necessary for due process'*.

a) Grant of provisional authority for increased rates, or to engage in a particular line of business [*RCPI v. National Telecommunications Commission*, 184 SCRA 517; *PLDT v. National Telecommunications Commission*, 190 SCRA 717].

b) Summary proceedings of distress and levy upon the property of a delinquent taxpayer.

c) Cancellation of a passport where no abuse of discretion is committed by Secretary of Foreign Affairs [*Suntay v. People*, 101 Phil 770].

d) Summary abatement of a nuisance perse which affects the immediate safety of persons or property [*Art. 704, Civil Code of the Philippines*].

e) Preventive suspension of a public officer or employee pending investigation of administrative charges filed against him [Sec. 51, Book V, Title I, Subtitle A, *Administrative Code of 1987*],

4. *Right against self-incrimination.*

a) In *Cabal v. Kapunan*, 6 SCRA 1064, it was held that since the administrative charge of unexplained wealth against the respondent therein

may result in the forfeiture of the property under R.A. 3019, the complainant cannot call the respondent to the witness stand without encroaching on his right against self-incrimination. In *Pascual v. Board of Medical Examiners*, 28 SCRA 345, the same rule was followed in administrative proceedings against a medical practitioner where the proceedings could possibly result in the loss of his privilege to practice medicine.

b) This right may be invoked by the respondent at the time he is called by the complainant as a witness; however, if he voluntarily takes the witness stand, he can be cross-examined; but he may still invoke the right at the time the question which calls for an answer which incriminates him of an offense other than that which is charged is asked. See *People v. Judge Ayson, supra.*,

5. **Power to punish contempt** is inherently judicial; may be exercised only if expressly conferred by law, and when administrative body is engaged in the performance of its quasi-judicial powers. See *Guevara v. Comelec, supra.; Dumapara v. Dimaporo*, 177 SCRA 478.

6. **Administrative decisions not part of the legal system.** Art. 8 of the Civil Code recognizes judicial decisions applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same [*Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999*],

7. **Administrative Appeal and Review.**

a) Where provided by law, appeal from an administrative determination may be made to a higher or superior administrative officer or body.

b) By virtue of the power of control which the President exercises over all executive departments, the President — by himself — or through the Department Secretaries (pursuant to the “alter ego” doctrine), may affirm, modify, alter, or reverse the administrative decision of subordinate officials and employees. See *Araneta v. Gatmaitan*, 101 Phil 328.

c) The appellate administrative agency may conduct additional hearings in the appealed case, if deemed necessary [*Reyes v. Zamora* 90 SCRA 92].

8. *Doctrine of res judicata.*

a) In *Ysmael v. Deputy Executive Secretary*, 190 SCRA 673, the Supreme Court said that decisions and orders of administrative agencies have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*. These decisions and orders are as conclusive upon the rights of the affected parties as though the same had been rendered by a court of general jurisdiction. The rule of *res judicata* thus forbids the reopening of a matter once determined by competent authority acting within their exclusive jurisdiction. See also *Boiser v. National Telecommunications Commission*, 169 SCRA 198; *Nasipit Lumber v. NLRC*, 177 SCRA 93; *United Housing v. Dayrit*, 181 SCRA 285; *National Housing Authority v. Pascual*, G.R. No. 158364, November 26, 2007..

b) In *United Pepsi Cola Supervisory Union v. Laguesma*, 288 SCRA 15, the Supreme Court reiterated the principle that the doctrine of *res judicata* applies to adversary administrative proceedings. Thus, because proceedings for certification election are quasi-judicial in nature the decisions therein can attain finality. In *Fortich v. Corona*, 289 SCRA 624, it was held that when the Office of the President declared its decision final because the motion for reconsideration was filed out of time, it lost jurisdiction over the case; accordingly, its act of modifying its decision (upon a second motion for reconsideration) was in gross disregard of the rules and the legal precept that accords finality to administrative decisions.

c) However, the doctrine does not apply in administrative adjudication relative to citizenship [*Board of Commissioners, CID v. Judge de la Rosa*, 197 SCRA 853]. On questions of citizenship, the doctrine of *res judicata* can apply only when the following conditions mentioned in *Zita Ngo Burca v. Republic, supra.*, obtain: (i) the question of citizenship is resolved by a court or an administrative body as a material issue in the controversy after a full-blown hearing; (ii) with the active participation of the Solicitor General; and (iii) the finding made by the administrative body on the citizenship issue is affirmed by the Supreme Court.

d) Neither is the doctrine applicable where the administrative decision of the WCC Referee awards the employee less than what the law provides [*B.F. Goodrich Philippines v. Workmen's Compensation Commission*, 1988].

9. *Some relevant decisions:*

a) Laguna Lake Development Authority (LLDA) has regulatory and quasi-judicial powers in respect to pollution cases, with authority to issue a

"cease and desist" order, and on matters affecting the construction of illegal fishpens, fish cages, and other aqua-culture structures in Laguna de Bay, pursuant to R.A. 4850 and its amendatory laws. The charter of LLDA grants it exclusive jurisdiction to issue permits for fish pens and fish enclosures in Laguna de Bay. The Local Government Code did not repeal this provision expressly — and the charter of LLDA being a special law prevails over the Local Government Code, a general law [*LLDA V. Court of Appeals, 251 SCRA 42*].

b) The DECS Regional Director has the authority to issue a return-to-work order (to striking public school teachers), to initiate administrative charges, and to constitute an investigating panel [*Regional Director, DECS Region VII v. Court of Appeals, G.R. No. 110193, January 17, 1995*],

c) The Housing and Land Use Regulatory Board (HLURB) is the successor-agency of the Human Settlements Regulatory Commission and has, therefore, assumed the latter's powers and functions, including the power to hear and decide cases of unsound real estate business practices and cases of specific performance [*Realty Exchange Venture Corporation v. Sendino, G.R. No. 109703, July 5, 1995*].

d) The Prosecution and Enforcement Division was established as the adjudicatory arm of the Securities and Exchange Commission [*Calma v. Court of Appeals, G.R. No. 122787, February 9, 1999*].

e) By virtue of R.A. 7638, it is now the Department of Energy, not the Energy Regulatory Board, that has jurisdiction over disputes involving direct connection of electric power. Definitely, the exploration, production, marketing, distribution, utilization or any other activity involving any energy resource or product falls within the supervision and control of the Department of Energy [*Energy Regulatory Board and Iligan Light & Power, Inc. v. Court of Appeals, G.R. No. 127373, March 25, 1999*].

f) Disputes involving homeowners associations fall within the exclusive jurisdiction of the Home Insurance Guarantee Corporation (HIGC), as expressly provided in R.A. 580, as amended [*Unilongo v. Court of Appeals, G.R. No. 123910, April 5, 1999*], *Note that at present, exclusive original jurisdiction are such disputes is lodged in the Housing and Land Use Regulatory Board (HLURB)*.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. The doctrine. Whenever there is an available administrative remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted. See *Aquino v. Mariano*, 129 SCRA 532; *National Development Company v. Herville*, 151 SCRA 200; *Union Bank v. Court of Appeals*, 290 SCRA 198.

1. Reasons.

- a) If relief is first sought from a superior administrative agency, resort to the courts may be unnecessary. In *Bangus Fry Fisherfolk v. Lanzanas*, G.R. No. 131442, July 10, 2003, the petitioners, instead of appealing the action of the Regional Executive Director to the DENR Secretary, immediately filed their complaint with the Manila RTC, thus depriving the DENR Secretary the opportunity to review the decision of his subordinate. Under applicable jurisprudence, petitioners' omission renders their complaint dismissible for lack of cause of action.
- b) The administrative agency should be given a chance to correct its error. Thus, in *Bernardo v. Abalos*, G.R. No. 137266, December 5, 2001, for failure of the petitioners to file a motion for reconsideration from the resolution of the Comelec en banc dismissing the complaint for insufficiency of evidence, the petition for certiorari filed with the Supreme Court was deemed premature and was dismissed. It was held that the purpose of the motion for reconsideration is to give the Comelec an opportunity to correct the error imputed to it.
- c) Principles of comity and convenience require that the courts stay their hand until the administrative processes are completed.
- d) Since judicial review of administrative decisions is usually made through special civil actions, such proceedings will not normally prosper if there is another plain, speedy and adequate remedy in the ordinary course of law. This was also cited by the Supreme Court as one of the reasons for the dismissal of the petition for certiorari in *Bernardo v. Abalos, supra..*²

2. Thus, in *Lopez v. City of Manila*, G.R. No. 127139, February 19, 1999, it was held that the rule must be observed in order to prevent unnecessary and premature resort to the courts. Besides, Sec. 187, R.A. 7160 (Local Government Code) expressly provides that administrative remedies must

exhausted before the constitutionality or legality of a tax ordinance may be challenged in court. In **National Irrigation Administration v. Enciso, G.R. No. 142571, May 5, 2006**, where the contractor tasked to widen a river immediately sued the National Irrigation Administration in court for payment without first filing a claim with the Commission on Audit, it was held that the contractor's failure to exhaust administrative remedies is fatal to his collection suit.

3. It must be noted, however, that only those decisions of administrative agencies made in the exercise of quasi-judicial powers are subject to the rule on exhaustion of administrative remedies [**Association of Philippine Coconut Desiccators v. Philippine Coconut Authority, G.R. No. 110526, February 10, 1998**]. In like manner, the doctrine of primary administrative jurisdiction applies only where the administrative agency exercises its quasi-judicial or adjudicatory powers. Thus, where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same [**Smart Communications v. National Telecommunications Commission, G.R. No. 151908, August 12, 2003**].

B. Corollary Principles:

1. **Doctrine of Prior Resort**, also known as the doctrine of primary administrative jurisdiction: Where there is competence or jurisdiction vested upon an administrative body to act upon a matter, no resort to the courts may be made before such administrative body shall have acted upon the matter.

a) In **Industrial Enterprises, Inc. v. Court of Appeals, 184 SCRA 426**, it was held that inasmuch as the memorandum of agreement between IEI and MMIC was derived from the coal-operating contract and intrinsically tied up with the right to develop coal-bearing lands, IEI's cause of action was not merely rescission of contract but the reversion of the operation of the coal blocks. Accordingly, the case should have been filed with the Board of Energy Development, not with the Regional Trial Court. See also **Commissioner of Customs v. Navarro, 77 SCRA 264; Almendras Mining v. Office of the Insurance Commissioner, 160 SCRA 656; PCGG v. Pena, 159 SCRA 556**.

b) In **Regional Director, DECS Region VII v. Court of Appeals, supra.**, the Supreme Court directed the Court of Appeals to suspend action on the cases brought before the latter until the final outcome of the administrative investigation, conformably with the doctrine of primary administrative jurisdiction. In **Garcia v. Court of Appeals, G.R. No. 100579, June 6, 2001**, where petitioner, who was at that time the Administrator of Philippine Coconut Administration, after having been preventively suspended on the basis of

administrative charges filed against him, immediately filed a petition for certiorari, prohibition and mandamus, it was held that resort to the courts was premature and precipitate, because the administrative proceedings were still on-going. Furthermore, from the decision of the Philcoa Board, the administrative remedy of appeal to the Civil Service Commission would still be available to the administrator. See also *Gonzales v. Court of Appeals, G.R. No. 106028, May 9, 2001*.

c) Questions relative to compliance with the requirements for the conversion of subdivision lots are properly cognizable by the Housing and Land Use Regulatory Board, not by the regular courts. Thus, no resort to the court may be made before the administrative body shall have acted upon the *matter [Cristobal v. Court of Appeals, 291 SCRA 122]*.

d) The enforcement of forestry laws, rules and regulations fall within the primary and special responsibilities of the Department of Environment and Natural Resources; thus, the assumption by the RTC of jurisdiction over the suit filed by respondents constitutes an encroachment into the domain of the administrative agency [*Paat v. Court of Appeals, 266 SCRA 167*]. Thus, in *Sy v. Court of Appeals, G.R. No. 121587, March 9, 1999*, the Supreme Court said that the lumber forfeited under RD. 705 which the petitioner sought to recover came under the custody of the DENR, and all actions seeking to recover possession thereof should be directed to that agency, before any resort to the courts may be made.

e) In the-matter of issuing licenses to operate radio stations, the National Telecommunications Commission is in a better position than the courts to determine to whom the privilege should be granted in order that public interest may be served. The doctrine of primary jurisdiction prevents the court from arrogating unto itself the authority to resolve a controversy which falls under the jurisdiction of a tribunal possessed with special competence [*Crusaders Broadcasting System v. National Telecommunications Commission, G.R. No. 139583, May 31, 2000*].

f) Executive Order No. 1008 vests in the Construction Industry Arbitration Commission (CIAC) original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties who have agreed to submit their dispute to voluntary arbitration [*Philrock v. Construction Industry Arbitration Commission, G.R. Nos. 132848-49, June 28, 2001*].

g) The interpretation of a law, made by an administrative agency like the Energy Regulatory Board, is accorded great respect and ordinarily

controls. It is the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. The courts give much weight to the government agency or officials charged with the implementation of the law, considering their competence, expertise, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret [*Energy Regulatory Board v. Court of Appeals, G.R. No. 113079, April 20, 2001*].

h) In *Prosecutor Tabao v. Judge Lilagan, A.M. No. RTJ-01-1651, September 4, 2001*, since the complaint for replevin stated that the shipment of tanbark, as well as the vessel on which it was loaded, was seized by the NBI for verification of supporting documents, and that the NBI had turned over the seized items to the DENR “for official disposition and appropriate action”, these allegations should have been sufficient to alert the respondent judge that the DENR had custody of the seized items and that administrative proceedings may have already been commenced concerning the shipment. Under the doctrine of primary administrative jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. Besides, it was clear that the plaintiff in the replevin suit had not exhausted administrative remedies available to him. Respondent judge’s act of taking cognizance of the replevin suit clearly demonstrates ignorance of the law.

i) Sec. 50, RA 6657 (Comprehensive Agrarian Reform Law) vests the Department of Agrarian Reform with quasi-judicial powers. Since the law does not distinguish, the jurisdiction of DARAB should, therefore, include all “agricultural lands under the coverage of the CARP”, including private lands devoted to or suitable for agriculture, as defined in Sec. 4 of the law. Accordingly, it was held that DARAB may properly take cognizance of this case involving a complaint for redemption, it being a case concerning the rights of respondents as tenants on agricultural land [*Same v. Maquiling, G.R. No. 138839, May 9 2002*]

j) The Pollution Adjudication Board is the agency of government tasked with determining whether the effluents of a particular industrial establishment comply with or violate applicable anti-pollution statutory and regulatory provisions. It also has the power to issue, ex parte, cease and desist orders. Thus, the premature invocation of the court’s intervention renders the complaint without cause of action and dismissible on such ground [*Estrada v. Court of Appeals, G.R. No. 137862, November 11, 2004*].

k) The petitioners’ premature resort to the courts necessarily becomes fatal to their cause of action. It is presumed that an administrative

agency, in this case the Board of Optometry, if afforded an opportunity to pass upon a matter, would decide the same correctly, or correct any previous error committed in its forum [*Caballes v. Sison, G.R. No. 131759, March 23, 2004*],

I) However, in *Regirto v. Pangasinan Colleges of Science and Technology, G.R. No. 156109, November 18, 2004*, where the petitioner sued the school for damages before the RTC for preventing her from taking the final exams due to her failure to pay for tickets for a school fund-raising activity, and respondent insisted that the complaint should first be filed with the Commission on Higher Education (CHED), the Supreme Court said that the CHED does not have the power to award damages, and thus, the petitioner could not have commenced her case before the CHED.

2. **Doctrine of finality of administrative action:** No resort to the courts will be allowed unless the administrative action has been completed and there is nothing left to be done in the administrative structure. See *Sta. Rosa Mining v. Leido, 156 SCRA 1*. Because the petitioner did not take an appeal from the order of the Director, Bureau of Labor Relations, to the Secretary of Labor and Employment, but went directly to court, it was held that the court action was made prematurely and the petitioner failed to exhaust administrative remedies [*SSS Employees Association v. Bathan-Velasco, G.R. No. 108765, August 27, 1999*] .

a) A party aggrieved must not merely initiate the prescribed administrative procedure to obtain relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the courts [*Zabat v. Court of Appeals, 338 SCRA 551*],

C. Effect of failure to exhaust administrative remedies. The jurisdiction of the court is not affected; but the complainant is deprived of a cause of action which is a ground for a motion to dismiss. However, if no motion to dismiss is filed on this ground, there is deemed to be a waiver. See *Soto v. Jareno, 144 SCRA 116; Eastern Shipping Lines v. POEA, 166 SCRA 533*.

D. Exceptions to the doctrine:

1. **Doctrine of qualified political agency (alter ego doctrine).** See *Kilusang Bayan, etc. v. Dominguez, 205 SCRA 92*. In *Nazareno v. Court of Appeals, 267 SCRA 589*, the Supreme Court held that when the Undersecretary of Natural Resources denied the motion for reconsideration, he was acting on behalf of

the Secretary of Natural Resources; accordingly, administrative remedies had been exhausted.

a) Except where the law expressly provides for exhaustion. See *Tan v. Director of Forestry*, 125 SCRA 302, where the failure of the petitioner to appeal the order of the Secretary of Natural Resources to the President of the Philippines (who issued Executive Proclamation No. 238, withdrawing the area from private exploration and establishing it as the Olongapo Watershed Forest Reserve) was deemed fatal to the petition.

b) In *Ca/o v. Fuertes*, 5 SCRA 399, where appeal had already been made to the President and, before the President could act on the appeal, the same was withdrawn, there was deemed to have been failure to exhaust administrative remedies. Besides, by appealing to the President, the party recognized a plain, speedy and adequate remedy still open to him in the ordinary course of law — and thus, his special civil action must fail. See also *National Development Company v. Herville, supra.*, *Industrial Power Sales v. Sinsuat*, 160 SCRA 19. However, where the appeal to the Office of the President had not been acted upon (and despite follow-ups for two months, no reply was received by the petitioner), and in the meantime, the Philippine Coconut Authority, pursuant to the assailed resolution, was issuing certificates of registration indiscriminately, the Supreme Court held that the Association of Philippine Coconut Desiccators was justified in filing the case in court [*Association of Philippine Coconut Desiccators v. Philippine Coconut Authority*, 286 SCRA 109].

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c) In *Samahang Magbubukid ng Kapdula, Inc. v. Court of Appeals*, G.R. No. 103953, March 25, 1999, it was held that the decisions of the DAR Secretary cannot be questioned before the DARAB. Exhaustion of administrative remedies is improper in this case, because Sec. 54 of R.A. 6657 specifically provides that decisions and awards of the DAR shall be brought up to the Court of Appeals by certiorari.

2. Where the administrative remedy is fruitless, e.g., suit for recovery of title to office must be instituted within one year from illegal ouster, otherwise the action prescribes.

3. Where there is estoppel on the part of the administrative agency [*Vda. De Tan v. Veterans Backpay Commission*, 105 Phil 377].⁴

4. Where the issue involved is purely a legal question [*Palma-Fernandez v. De la Paz*, 160 SCRA 751; *Eastern Shipping Lines v. POEA, supra.*; *Samson v. NLRC*, 253 SCRA 112]. In *Castro v. Secretary Gloria*, G.R.

August 20, 2001, the Supreme Court said that there is a question of law when the doubts or differences arise as to what the law is on a certain state of facts. There is a question of fact when the doubts or differences arise as to the truth or falsity of alleged facts.

a) In ***Castro***, the petitioner was not disputing the administrative finding of guilt, but the correctness of the penalty imposed. He claimed that the proper penalty for the first offense of immoral or disgraceful conduct is only suspension, not dismissal from the service. Understandably, the issue is a pure question of law. Similarly, in ***Bordallo v. Professional Regulation Commission & Board of Marine Deck Officers, G.R. No. 140920, November 19, 2001***, it was held that the issue was purely a legal question, inasmuch as the question was which law to apply: RA 8544 (Philippine Merchant Marine Officers Act of 1998) which prescribed a passing grade in the licensure examination of 70%, or Presidential Decree No. 97, which prescribed a passing grade of 75%. Likewise, in ***Boncodin v. National Power Corporation, G.R. No. 168476, September 27, 2006***, where the dispute was on the legality of the resolution adopted by the Board of Directors of National Power Corporation granting a salary step increment to all officials and employees who had served the NPC for ten years as of 1999, it was held that the issue involved were purely legal.

b) In ***Ty v. Trampe, 250 SCRA 500***, it was held that there was no necessity to appeal to the Board of Assessment Appeals, considering that the parties agreed that the issues in the petition were purely legal, and thus, no evidence was presented in the lower court. In ***Espina v. Court of Appeals, G.R. No. 97903, August 24, 1998***, considering that the issue raised called for the interpretation and application of the law creating the National Electrification Administration and the by-laws of the Leyte IV Electric Cooperative, it was held that inasmuch as the issue was a purely legal one, there was no need to exhaust administrative remedies.

5. Where the administrative action is patently illegal, amounting to lack or excess of jurisdiction [***Industrial Power Sales v. Sinsuat, supra***]. In ***Cabada v. Alunan, 260 SCRA 838***, the Supreme Court said that the Commissioner of the National Police Commission who denied petitioners' appeal to the Secretary of Interior and Local Government acted in a patently illegal manner, because only the Secretary of DILG could act on the appeal and that the National Police Commission, being a collegial body, cannot be bound by the act of an individual Commissioner.⁶

6. Where there is unreasonable delay or official inaction. In ***Republic v. Sandiganbayan, 255 SCRA 438***, the inaction of the PCGG on the motion filed by the respondent and co-respondent [it took seven years before the PCGG

filed its motion to dismiss based on failure to exhaust administrative remedies] gave rise to unreasonable delay.

7. Where there is irreparable injury or threat thereof, unless judicial recourse is immediately made [*De Lara v. Cloribel*, 14 SCRA 269]. In **National Food Authority v. Court of Appeals**, 253 SCRA 470, because the contracts of the security agencies had already been terminated and their replacements were hired, appeal to the Board of Trustees of the National Food Authority and to the Secretary of Agriculture was not a plain, speedy and adequate remedy in the course of law. The respondents had to go to court to stop the implementation of the new contracts.'

8. In land cases, where the subject matter is private land [*Soto v. Jareno, supra*.]

9. Where the law does not make exhaustion a condition precedent to judicial recourse.

10. Where observance of the doctrine will result in the nullification of the claim.

11. Where there are special reasons or circumstances demanding immediate court action.

a) In **Roxas & Co. v. Court of Appeals**, G.R. No. 127876, December 17, 1999, the Supreme Court held that where exhaustion of administrative remedies before the DAR does not provide the party with a plain, speedy and adequate remedy, then the party may seek immediate redress in court.

b) In **Department of Agrarian Reform v. Apex Investment and Financing Corporation**, G.R. No. 149422, April 10, 2003, the Supreme Court said that the doctrine of exhaustion of administrative remedies may be disregarded when, as in this case, (i) there are circumstances indicating the urgency of judicial intervention; and (ii) the administrative action is patently illegal and amounts to lack or excess of jurisdiction. In this case, the PARO did not take immediate action on the respondent's protest, and it was only after more than one year that it was forwarded to the DAR. Since then, what petitioner DAR did was to require respondent every now and then to submit copies of supporting documents which were already attached to its Protest. In the meantime, respondent found that the PARO had caused the cancellation of its title and that a new one was issued to an alleged farmer- beneficiary.

12. When due process of law is clearly violated [*Anzaldo v. Clave, 119 SCRA 353; Zambales Chromite v. Court of Appeals, 94 SCRA 261*], In *Pagara v. Court of Appeals, 254 SCRA 606*, because the parcels of land of the respondent were placed under Operation Land Transfer of the Land Reform Program and the certificates of title issued to the petitioners without the respondent having been given an opportunity to be heard, the Supreme Court said that there was denial of due process, and therefore, there was no need for the respondent to exhaust administrative remedies.

13. When the rule does not provide a plain, speedy and adequate remedy [*Quisumbing v. Judge Gumban, 193 SCRA 520*]. In *Estuerte v. Court of Appeals, 193 SCRA 541*, the Supreme Court said that in a civil action for damages, the court's concern is whether or not damages, personal to the plaintiff, were caused by the acts of the defendants; it can proceed independently of the administrative action. Accordingly, the doctrine of exhaustion of administrative remedies does not apply.

a) In *Information Technology Foundation of the Philippines v. Comelec, G.R. No. 159139, January 13, 2004*, the Supreme Court referred to this as one of the reasons why there was no necessity for the petitioner to exhaust administrative remedies. In fact, the Court, citing *Paat v. Court of Appeals, 266 SCRA 167*, enumerated the instances when the rule on exhaustion may be disregarded, as follows: [1] When there is violation of due process; [2] when the issue involved is purely a legal question; [3] When the administrative action is patently illegal amounting to lack or excess of jurisdiction; [4] When there is estoppel on the part of the administrative agency concerned; [5] When there is irreparable injury; [6] When the respondent is a Department Secretary whose acts, as an alter ego of the President, bears the implied and presumed approval of the latter; [7] When to require exhaustion of administrative remedies would be unreasonable; [8] When it would amount to a nullification of the claim; [9] When the subject matter is a private land in land case proceedings; [10] When the rule does not provide a plain, speedy or adequate remedy; and [11] When there are circumstances indicating the urgency of judicial intervention.

IV. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

A. Rule: Except when the Constitution requires or allows it, judicial review may be granted or withheld as Congress chooses. Thus, the law may provide that a determination made by an administrative agency shall be final and irreviewable. In such a case, there is no violation of due process.

1. However, Sec. 1, par. 2, Art. VIII, Philippine Constitution, which provides that the judicial power includes the power of the courts of justice to determine whether or not there has been a grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of any agency or instrumentality of government, clearly means that judicial review of administrative decisions cannot be denied the courts when there is an allegation of grave abuse of discretion.

B. Bases for Judicial Review:

1. The Constitution. For instance, Sec. 7, Art. IX-A, Constitution, provides: "x x x 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.

2. Statutes.

3. General principles of law. In *San Miguel Corporation v. Secretary of Labor (1975)*, it was held that there is an underlying power in the Courts to scrutinize the acts of administrative agencies on questions of law and jurisdiction although no right of review is given by statute. This is designed to keep the administrative agency within its jurisdiction and to protect substantial rights of parties affected by its decisions. It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudication. In *Continental Marble v. NLRC, 161 SCRA 151*, the Supreme Court held that by the nature of his functions, the voluntary arbitrator acts in a quasi-judicial capacity. The Court must pass upon his work where a question of law is involved, or where a showing of abuse of authority or discretion in their official acts is properly raised in a petition for certiorari. In *Unicraft Industries International v. Court of Appeals, G.R. No. 134903, March 23, 2001*, it was held that the decision of a Voluntary Arbitrator, although generally accorded finality, may still be subject to judicial review if there was

a violation of due process. In this case, the omission to give the petitioner a chance to present evidence is a clear violation of a party's constitutional right, and has the effect of rendering the Arbitrator's judgment null and void.

C. Methods of obtaining Judicial Review: *Classes:*

1. *Statutory or non-statutory:*

- a) Statutory - available pursuant to specific statutory provisions.
- b) Non-statutory - where there is no express statute granting review, relief is obtained by means of the common law remedies, or by the prerogative writs of certiorari, mandamus, habeas corpus, quo warranto or prohibition.

[NOTE: If statutory methods for judicial review are available, they are ordinarily exclusive, and the use of non-statutory methods will not likely be permitted.]

2. *Direct or collateral:*

- a) Direct - attempt to question in subsequent proceedings the administrative action for lack of jurisdiction, grave abuse of discretion, etc..

i) In *Co v. House of Representatives Electoral Tribunal*, 199 SCRA 692, it was held that the citizenship of an individual cannot be attacked in a collateral proceeding.

b) Collateral - relief from administrative action sought in a proceeding the primary purpose of which is some relief other than the setting aside of the judgment, although an attack on the judgment may be incidentally involved, e.g., a damage suit against the administrative officials.

D. What court has jurisdiction.

1. Rule 43 of the 1997 Rules of Civil Procedure provides that the Court of Appeals shall have appellate jurisdiction over judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.

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2. In *Philippine Sinter Corporation v. Cagayan Electric Power & Light, G.R. No. 127371, April 25, 2002*, the Supreme Court noted that Sec. 10 of Executive Order No. 172 (the law creating the Energy Regulatory Board) provides that a review of ERB's decisions or orders is lodged in the Supreme Court (now in the Court of Appeals). The Court then reiterated the

where the law provides for an appeal from the decisions of administrative bodies to the Supreme Court or to the Court of Appeals, it means that such bodies are co-equal with the Regional Trial Courts in terms of rank and stature, and logically, beyond the control of the latter. It bears stressing that this doctrine of non-interference by trial courts with co-equal administrative bodies is intended to ensure judicial stability in the administration of justice whereby the judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction.

3. However, in *Board of Commissioners, CID v. Judge de la Rosa, supra.*, the Supreme Court ruled that there is nothing in the law creating the Commission on Immigration and Deportation [now Bureau of Immigration] which provides that its decisions may be reviewed only by the Court of Appeals; accordingly, review by the RTC was upheld. Likewise, in *Commendador v. de Villa, 200 SCRA 80*, it was held that the decision/order of a court martial may be reviewed by the RTC. By the same token, although the Laguna Lake Development Authority (LLDA) has express powers as a regulatory and quasi-judicial body, it is not co-equal to the Regional Trial Court [*LLDA v. Court of Appeals, supra.*].

E. Questions which may be subject of judicial review:

1. Questions of Law.
2. Questions of Fact. Factual findings of administrative agencies are generally conclusive upon the courts if supported by substantial evidence; thus, Courts are precluded from reviewing questions of fact, except:
 - a) When expressly allowed by statute;
 - b) Fraud, imposition or mistake other than error of judgment in evaluating the evidence [*Ortua v. Singson Encarnacion, 59 Phil 440*]; or
 - c) Error in appreciation of the pleadings and in the interpretation of the documentary evidence presented by the parties [*Tan Tiang Teek v. Commission, 40 O.G., 6th Supp. 125*].³
3. Mixed Questions of Law and Fact [*Brandeis Doctrine of Assimilation of Facts*]: Where what purports to be a finding upon a question of fact is so involved with and dependent upon a question of law as to be in substance and effect a decision on the latter, the Court will, in order to decide the legal question, examine the entire record including the evidence if necessary.

F. Guidelines for the exercise of the power.

1. Findings of fact are respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant. See

Bagsican v. Court of Appeals, 141 SCRA 226; Lianga Bay Logging v. Court of Appeals, 157 SCRA 357; Beautifont v. Court of Appeals, 157 SCRA 481; Planas Commercial v. NLRC, G.R. No. 121696, February 11, 1999; Artuz v. Court of Appeals, G.R. No. 142444, September 13, 2001.

a) Findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence [*Biak-na-Bato Mining v. Tanco, 193 SCRA 323; Nuesa v. Court of Appeals, G.R. No. 132048, March 06, 2002*].

b) However, the principle that factual findings of administrative bodies are binding upon the Court may be sustained only when no issue of credibility is raised. Thus, when the factual findings of the NLRC do not agree with those of the Labor Arbiter, the Court must, of necessity, review the records to determine which findings should be preferred as more conformable to the evidentiary facts [*Arboleda v. NLRC, G.R. No. 119509, February 11, 1999*].

2. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency on the sufficiency of evidence. The Court recognizes that the trial court or the administrative body, as the trier of facts, is in a better position to assess the demeanor of the witnesses and the credibility of their testimonies as they were within its proximal view during the hearing or investigation [*Mollaneda v. Umacob, G.R. No. 140128, June 6, 2001*].

3. The administrative decision in matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud, collusion or error of law. See *Anzaldo v. Clave, supra., Atlas Consolidated v. Factoran, 154 SCRA 49*.

a) In *Remolona v. Civil Service Commission, G.R. No. 137473, August 2, 2001*, the Supreme Court said that courts will not generally interfere with purely administrative matters addressed to the sound discretion of government agencies, unless there is a clear showing of arbitrary, capricious or grave abuse of discretion amounting to lack of jurisdiction.

G. Judicial Review is not trial *de novo*: It is merely an ascertainment of whether the findings of the administrative agency are consistent with law, free from fraud or imposition, and supported by evidence.

LAW OF PUBLIC OFFICERS

I. GENERAL PRINCIPLES

A. *Public Office.* 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, G.R. No. 116418, March 7, 1995*].

1. *Elements:* a) Created by law or by authority of law; b) Possess a delegation of a portion of the sovereign powers of government, to be exercised for the benefit of the public; c) Powers conferred and duties imposed must be defined, directly or impliedly, by the legislature or by legislative authority; d) 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 e) Must have permanence or continuity.

2. *Creation.* Public offices are created: a) By the Constitution, e.g., Office of the President; b) By valid statutory enactments, e.g., Office of the Insurance Commissioner; and c) By authority of law, e.g., the Davide Commission.

B. *Public Officer.* A person who holds a public office.

1. Distinguished from public officer as understood in criminal law.

a) In *Art. 203, Revised Penal Code*, any person who, by direct provision of law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer.

b) Under Sec. 2, *R.A. 3019*, the term “public officer” includes “elective and appointive officials and employees, permanent or temporary, whether in the classified, unclassified or exempt service, receiving compensation, even nominal, from the government”.ⁱ⁾

i) The terms “classified, unclassified or exempt service” were the old categories of the positions in the Civil Service, which have been reclassified into Career and Non-Career service by P.D. 807. Petitioner, as Project Manager of a government building construction project, falls under

the Non-Career service category, and is, thus, a public officer under the law. Accordingly, the Sandiganbayan has jurisdiction over him [*Piclaro v. Sandiganbayan, G.R. No. 110544, October 16, 1995*].

c) Although the National Internal Revenue Code authorizes the Bureau of Internal Revenue to effect a constructive restraint by requiring any person to preserve the restrained property, there is no provision constituting such person as a public officer by reason of such requirement. The Sandiganbayan, therefore, has no jurisdiction over the case involving such a person [*Azarcon v. Sandiganbayan, 268 SCRA 747*].

2. **Distinguished from clerk or employee:** "Officer" refers to a person whose duties, not being of a clerical or manual nature, involve the exercise of discretion in the performance of the functions of government. When used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, "officer" includes any government employee, agent or body having authority to do the act or exercise that function [**Sec. 2 (14), Administrative Code of 1987**].

a) In *Laurel v. Desierto, G.R. No. 145368, April 12, 2002*, the Supreme Court said that the most important characteristic which distinguishes an office from an employment is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, and that the same portion of the sovereignty of the country, either legislative, executive or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers so conferred are of this nature, the individual is not a public officer.

II. ELIGIBILITY AND QUALIFICATION

A. Qualification.

1. Understood in two different senses: (a) May refer to endowments, qualities or attributes which make an individual eligible for public office, e.g., citizenship; or (b) May refer to the act of entering into the performance of the functions of a public office, e.g., taking the oath of office.

2. When used in the sense of endowments, qualities or attributes, the individual must possess the qualifications at the time of appointment or election and continuously for as long as the official relationship continues.

a) In *Frivaldo v. Comelec*, 257 SCRA 727, the Supreme Court said that the Local Government Code does not specify the date when the candidate must possess Filipino citizenship. Philippine citizenship is required in order 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 (as Filipino) on June 30, 1995 when his application for repatriation was granted by the Special Committee on Naturalization created under PD 825, he was therefore qualified to be proclaimed. Besides, Sec. 39 of the Local Government Code speaks of qualifications of elective officials, not of candidates.

b) Property qualifications may not be imposed for the exercise of the right to run for public office. In *Maquira v. Borra*, 15 SCRA 7, the Supreme Court declared as unconstitutional the law requiring each candidate to post a bond of P20,000 upon the filing of the certificate of candidacy, subject to forfeiture if he did not obtain at least 10% of the total votes cast in the constituency where he ran.

c) Loss of any of the qualifications during incumbency will be a ground for termination. See *Frivaldo v. Comelec*, 174 SCRA 245; *Labo v. Comelec*, 176 SCRA 1.

3. When referring to the act of entering into the performance of the functions of the office, failure of an officer to perform an act required by law could affect the officer's title to the given office.

a) Prolonged failure or refusal to take the oath of office could result in forfeiture of the office. See Sec. 11, B.P. 881, which provides: "The office of any official elected who fails or refuses to take his oath of office within six

months from his proclamation shall be considered vacant, unless said failure is for a cause or causes beyond his control."

b) An oath of office is a qualifying requirement for a public office. Only when the public officer has satisfied this prerequisite can his right to enter into the position be considered plenary and complete. Until then, he has none at all, and for as long as he has not qualified, the holdover officer is the rightful occupant [*Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999]. An oath of office taken before one who has no authority to administer oath is no oath at all.

c) However, once proclaimed and duly sworn in office, a public officer is entitled to assume office and to exercise the functions thereof. The pendency of an election protest is not sufficient basis to enjoin him from assuming office or from discharging his functions [*Mendoza v. Laxina*, G.R. No. 146875, July 14, 2003].

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4. *Authority to prescribe qualifications.*

a) When the qualifications (in the sense of endowments, attributes, etc.) are prescribed by the Constitution, they are generally exclusive, except where the Constitution itself provides otherwise.

b) Relative to public offices created by statute, Congress has virtually plenary powers to prescribe qualifications, provided that (i) the qualifications are germane to the objective/s for which the public office was created; and (ii) the qualifications are not too specific as to fit a particular, identifiable person, because that would deprive the appointing authority of discretion in the selection of the appointee. See *Flores v. Drilon*, G.R. No. 104732, June 22, 1993.

B. Disqualifications.

1. *Authority.* The legislature has the right to prescribe disqualifications in the same manner that it can prescribe qualifications, provided that the prescribed disqualifications do not violate the Constitution. In *Dumlao v. Comelec*, 95 SCRA 400, the part of the law which provided that the mere filing of a criminal information for disloyalty was *prima facie* proof of guilt, and thus sufficient to disqualify a person from running for public office, was held unconstitutional for being contrary to the constitutional presumption of innocence. See also *Pamil v. Teleron*, 86 SCRA 413. The disqualifications prescribed by law may be because of unfitness for public office, or because the person is rendered ineligible for the office.

2. General disqualifications under the Constitution.

a) No candidate who lost in an election shall, within one year after such election, be appointed to any office in Government [Sec. 6, Art. IX-B].

b) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure [Sec. 7(1), Art. IX-B].

i) In *Flores v. Drilon*, G.R. No. 104732, June 22, 1993, the Supreme Court declared as constitutional the provision of the law creating the Subic Bay Metropolitan Authority which mandated the appointment — as first Administrator of the Authority — the incumbent Mayor of Olongapo City.

c) Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other position in Government [Sec. 7(2), Art. IX-B].

i) In *National Amnesty Commission v. Commission on Audit*, G. R. No. 156982, September 8, 2004, it was held that when another office is held by a public officer in an *ex officio* capacity, as provided by law and as required by the primary functions of his office, there is no violation, because such other office does not comprise “any other position”. The *ex officio* position is actually and, in legal contemplation, part of the principal office. But the official concerned is not entitled to receive additional compensation for his services in the said position because his services are already paid for and covered by the compensation attached to his principal office.

3. Specific disqualifications under the Constitution.

a) The President, Vice President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in the Constitution, hold any other office or employment during their tenure [Sec. 13, Art. VII].

i) See *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, where the Supreme Court declared as unconstitutional Executive Order No. 284, which would allow Cabinet Secretaries to hold two other offices. But when the other office is held in an *ex officio* capacity, there is no violation, provided that the official concerned is not entitled to additional compensation for his services [*National Amnesty Commission v. CO A, supra*.].

b) 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 corporations 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 [Sec. 13, Art. VI]. See *Adaza v. Pacana*, 135 SCRA 431. .*

c) *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 [Sec. 12, Art. VIII]. See *In Re: Manzano*, 166 SCRA*

d) *No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment [Sec. 2, Art. IX-A]. The same disqualification applies to the Ombudsman and his Deputies [Sec. 8, Art. XI].*

e) *The Ombudsman and his Deputies shall not be qualified to run for any office in the election immediately succeeding their cessation from office [Sec. 11, Art. XI],*

f) *. Members of Constitutional Commissions, the Ombudsman and his Deputies must not have been candidates for any elective position in the elections immediately preceding their appointment. [Sec. 1, Art. IX-B' Sec. 1 Art. IX-C; Sec. 1, Art. IX-D; Sec. 8, Art. XI]. ,*

g) *Members of Constitutional Commissions, the Ombudsman and his Deputies are appointed to a term of seven (7) years, without reappointment [Sec. 1(2), Art. IX-B; Sec. 1 (2), Art. IX-C; Sec. 1 (2), Art. IX-D; Sec. 11, Art.*

h) *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 as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations [Sec. 13, Art. VII],*

III. DE FACTO OFFICERS

A. *Defined.* One who has the reputation of being the officer that he assumes to be, and yet is not a good officer in point of law [*Torres v. Ribo*, 81 Phil 44]. He must have acted as an officer for such length of time, under color of title and under such circumstances of reputation or acquiescence by the public and public authorities, as to afford a presumption of election or appointment, and induce people, without inquiry, and relying on the supposition that he is the officer he assumes to be, to submit to or invoke his action.

B. *Legal Effect of Acts; Rationale.* The acts of the *de facto* public officer, insofar as they affect the public, are valid, binding and with full legal effect. The doctrine is intended not for the protection of the public officer, but for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of a public office [*Monroy v. Court of Appeals*, 20 SCRA 620].

C. *Elements.*

1. *A validly existing public office.* See *Tuamda v. Sandiganbayan*, G.R. No. 110544, October 16, 1995.
2. *Actual physical possession of said office.*
3. *Color of title to the office.* There is color of title to the office in any of the following cases:

a) By reputation or acquiescence, the public, without inquiry, relies on the supposition that he is the public officer that he purports to be. This is acquired usually when the individual has acted as an officer for such a length of time that the public believes that he is the public officer that he assumes to be.

b) Under a known and valid appointment or election, but the officer failed to conform to a requirement imposed by law, e.g., taking the oath of office.

c) Under a known appointment or election, void because of the ineligibility of the officer, or want of authority of the appointing or electing authority, or because of an irregularity in his appointment or election, such ineligibility, want of authority or irregularity being unknown to the public.

d) Under a known appointment or election pursuant to an unconstitutional law, before the law is declared unconstitutional.

D. Entitlement to Salaries. The general rule is that the rightful incumbent of a public office may recover from an officer *de facto* the salary received by the latter during the time of his wrongful tenure, even though he entered into the office in good faith and under color of title [*Monroy v. Court of Appeals, supra.*]. In *General Manager, PPA v. Monserate*, G.R. No. 129616, April 17, 2002, the Supreme Court ordered petitioner Ramon Anino to pay to the respondent backpay differentials pertaining to the period from the time he (Anino) wrongfully assumed the contested position of Manager II up to his retirement on November 30, 1997.

1. However, where there is no *de jure* public officer, the officer *de facto* who in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may, in an appropriate action, recover the salary, fees and other compensations attached to the office.

a) In *Civil Liberties Union v. Executive Secretary, supra.*, even as Executive Order No. 284 was declared unconstitutional because it allowed Cabinet members to hold multiple offices in direct contravention of Sec. 13, Art. VII, it was held that during their tenure in the questioned positions, the respondents may be considered *de facto* officers and as such entitled to the emoluments of the office/s for actual services rendered. In *Menzon v. Petilla*, 197 SCRA 251, the Supreme Court declared that even granting that the President, acting through the Secretary of Local Government, possesses no power to appoint petitioner [as Acting Vice Governor], at the very least, the petitioner is a *de facto* officer entitled to compensation. There is no denying that the petitioner assumed the Office of Vice-Governor under color of appointment, exercised the duties attached to said office for a long period of time, and was acclaimed as such by the people of Leyte. Under the principle of public policy on which the *de facto* doctrine is based, and on basic considerations of justice, it would be iniquitous to now deny him the salary due him for the services he actually rendered. In *Sampayan v. Daza*, 213 SCRA 807, it was held that Daza would have been a *de facto* officer, and as such, he cannot be made to reimburse funds disbursed during his term of office because his acts were valid. See also *Flores v. Drilon, supra.*²

2. In *Rodriguez v. Tan*, 91 Phil 724, the Supreme Court said that having been duly proclaimed Senator and having assumed office as required by law, the defendant is entitled to the compensation, emoluments and allowances which the Constitution provides for the position for the

[But note the concurring opinion of Justice Padilla: If the defendant, directly or indirectly, committed unlawful or tortious acts which led to and resulted in his proclamation as Senator-elect, he would be answerable for damages.]

3. In *Malaluan v. Comelec*, G.R. No. 120193, March 6, 1996, the Comelec, finding merit in Evangelista's appeal from the regional trial court, ordered Malaluan to vacate the office of mayor and to pay Evangelista attorney's fees, actual expenses, unearned salary and other emoluments, obviously considering Malaluan a usurper, inasmuch as he was ordered proclaimed only by the regional trial court. The Supreme Court deemed the award of salaries and other emoluments improper, holding that Malaluan was not a usurper but a *de facto* officer, having exercised the duties of the elective office under color of election (having been declared winner by the regional trial court).

IV. COMMENCEMENT OF OFFICIAL RELATIONS

A. Official relations are commenced: (1) By appointment; or (2) By election.

B. Appointment.

1. *Definition of terms.*

- a) Appointment: the selection, by the authority vested with the power, of an individual who is to perform the functions of a given office.
- b) Commission: the written evidence of the appointment.
- c) Designation: the imposition of additional duties, usually by law, on a person already in public service.

2. *Classification:*

a) Permanent and Temporary. A permanent appointment is extended to a person possessing the requisite qualifications, including the eligibility required, for the position, and thus protected by the constitutional guaranty of security of tenure. A *temporary* appointment is an acting appointment; it is extended to one who may not possess the requisite qualifications or eligibility required by law for the position, and is revocable at will, without the necessity of just cause or a valid investigation.

i) An “acting” appointment is a temporary appointment and revocable in character [*Marohombsar v. Alonto*, 194 SCRA 391]. Acquisition of the appropriate civil service eligibility by a temporary appointee will not *ipso facto* convert the temporary appointment into a permanent one; a new appointment is necessary [*Maturan v. Maglana*, 113 SCRA 268, reiterated in *Province of Camarines Sur v. Court of Appeals*, G.R. No. 104639, July 14 1995].

ii) In *Achacoso v. Macaraig*, 195 SCRA 235, it was held that an appointment to a position in the Career Service of the Civil Service does not necessarily mean that the appointment is a permanent one and the appointee entitled to security of tenure. Where the appointee does not possess the qualifications for the position, the appointment is temporary and may be terminated at will. This was reiterated in *De Leon v. Court of Appeals*, G.R. No. 127182, January 22, 2001, where the Supreme Court said that the mere fact that a position belongs to the Career Service does not automatically

confer security of tenure. Such right will have to depend on the nature of the appointment which, in turn, depends on the appointee's 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 be transferred or reassigned without violating the constitutional guarantee of security of tenure.

iii) In *Romualdez III v. Civil Service Commission*, 197 SCRA 168, the acceptance by the petitioner of a temporary appointment resulted in the termination of official relationship with his former permanent position. When the temporary appointment was not renewed, the petitioner had no cause to demand reinstatement thereto. In *Felix v. Buenaseda*, G.R. No. 109704, July 17, 1995, the Supreme Court said that whatever objections the petitioner had against the earlier change from his status as permanent Senior Resident Physician to temporary Senior Resident Physician were never pursued nor mentioned at, or after his designation as temporary Medical Specialist I. He is therefore estopped from insisting upon a right or claim which he had plainly abandoned when, from all indications, he enthusiastically accepted the promotion. A similar situation occurred in *Pabu-aya v. Court of Appeals*, G.R. No. 128082, April 18, 2001, where petitioner, holding a permanent appointment as Utility Worker, accepted a temporary appointment as Bookbinder II, in the Office of the Provincial Board of Negros Occidental. Since a temporary appointment shall not exceed twelve months, pursuant to Sec. 13(b), Omnibus Rules Implementing Book V, Administrative Code of 1987, petitioner could not claim security of tenure upon the expiration of the one-year period and demand reappointment or reinstatement. Likewise, in *Padilla v. Civil Service Commission*, G.R. No. 149451, May 8, 2003, petitioner resigned from her permanent position and accepted casual or temporary appointments.

iv) A mere designation does not confer security of tenure, as the person designated occupies the position only in an acting capacity [*Sevilla v. Court of Appeals*, 209 SCRA 637]. This was reiterated in *Gloria v. de Guzman*, G.R. No. 116183, October 6, 1995, where it was held that private respondent's assignment as Coordinator of Extension Services (CES) at PSCAwas a mere designation; thus, not being a permanent appointment, the designation to the position cannot be the subject of a case for reinstatement.

v) Where the appointment is subject to conditions, e.g., that there is no pending protest against the appointment or any decision by competent authority which will adversely affect the approval of the appointment, the appointment is not permanent. In any event, the appointee cannot claim

a "complete appointment" as long as the re-evaluation incidental to the re-organization is still pending [*Sinon v. Civil Service Commission*, 215 SCRA 410]. Where the employment is qualified by the phrase "unless terminated sooner", it is clear that even if the employment is co-terminous with the project, the employee nevertheless serves at the pleasure of the appointing authority [*Orcullo v. Civil Service Commission*, G.R. No. 138780, May 22, 2001].

■ vi) However, in *Ambas v. Buenaseda*, 201 SCRA 308, it was held that where the temporary appointment is for a fixed period, the appointment may be revoked only at the expiration of the period, or, if revocation is made before such expiration, the same has to be for a valid and just cause.

vii) In connection with Sec. 99 of the Local Government Code which requires consultation with the local school board in the appointment of a schools division superintendent, the Supreme Court said, in *Osea v. Malaya*, G.R. No. 139821, January 30, 2002, that the requirement obviously applied to appointments extended by the DECS. In 1994, when the position of schools division superintendent was placed within the career executive service, the power to appoint was vested in the President. Thus, the President issued the appointment which was not specific as to location. The prerogative to designate the appointees to their respective stations was vested in the DECS, pursuant to the exigencies of the service. The petitioner could not demand that she be designated to the Camarines Sur division because she lacked one essential ingredient, her appointment to the position. Her earlier designation as OIC, Asst. Schools Division Superintendent of Camarines Sur, was temporary, giving her no vested right to the position of Schools Division Superintendent.

viii) An appointment for a fixed term of five years "unless sooner terminated" is not terminable at will. It is not an appointment in an acting capacity, and the appointee cannot be terminated without just cause [*Sta. Maria v. Lopez*, G.R. No. L-30773, February 18, 1970]. Having an appointment with a fixed term, he cannot, without his consent, be transferred before the end of his term. Thus, in this case, the appointee's transfer to the position of Special Assistant with the rank of Dean was a demotion, because deanship in the university is more exalted than that of a Special Assistant [*Sta. Maria v. Lopez, supra*.] .?

b) Regular and Ad-interim. A regular appointment is one made by the President while Congress is in session after the nomination is confirmed by the Commission on Appointments, and continues until the end of the term. An ad-interim appointment is one made while Congress is not in session, before confirmation by the Commission on Appointments, is immediately effective, and ceases to be valid if disapproved or bypassed by the Commission on Appointments upon the next adjournment of Congress.

i) An ad-interim appointment is a permanent appointment, and its being subject to confirmation does not alter its permanent character [*Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, 140 SCRA 22].

ii) Classification of appointments into regular and ad interim can be used only when referring to the four (4) categories of appointments made by the President of the Philippines in the first sentence of Sec. 16, Art. VIII of the Constitution, which require confirmation by the Commission on Appointments, viz: (ia) Heads of executive departments; (ib) Ambassadors, other public ministers and consuls; (ic) Officers of the armed forces of the Philippines, from the rank of colonel or naval captain; and (id) Officers whose appointments are vested in the President under the Constitution. See *Sarmiento v. Mison*, 156 SCRA 549; *Bautista v. Salonga*, 172 SCRA 169; *Quintos-Deles v. Committee on Constitutional Commissions, Commission on Appointments*, 177 SCRA 259; *Calderon v. Carale*, 208 SCRA 254.

3. Steps in the Appointing Process

a) For regular appointments: (i) Nomination by the President; (ii) Confirmation by the Commission on Appointments; (iii) Issuance of the commission; and (iv) Acceptance by the appointee. In the case of ad interim appointments, the nomination, issuance of the appointment and acceptance by the appointee precede the confirmation by the Commission on Appointments.

b) For appointments which do not require confirmation: (i) Appointment by appointing authority; (ii) Issuance of the commission; and (iii) Acceptance by the appointee.

i) In *Lacson v. Romero*, 84 Phil 740, the Supreme Court held that acceptance of the appointment by the appointee is the last act that completes the appointing process. A person cannot be compelled to accept an appointment to public office, as the same will constitute a violation of the constitutional right against involuntary servitude, except when the appointment is made to an office required in defense of the State, as contemplated in Sec. 4, Art. II of the Constitution.

c) Where the appointment is to the career service of the Civil Service, attestation by the Civil Service Commission is required. An appointment to the career service of the Civil Service is not deemed complete until attestation/approval by the Civil Service Commission. The Omnibus Rules Implementing Book V, E.O. 292, provides that an appointment not submitted to the Civil Service Commission within 30 days from issuance (which shall be the date

appearing on the face of the appointment) shall be ineffective. Without the favorable certification or approval of the Civil Service Commission, no title to the office can yet be deemed to be permanently vested in favor of the appointee, and the appointment can still be revoked or withdrawn by the appointing authority. Until the appointment shall have been a completed act, it would likewise be precipitate to invoke security of tenure [*Tomali v. Civil Service Commission, G.R. No. 110598, December 1, 1994*]. However, all that the Civil Service Commission is authorized to do is to check if the appointee possesses the qualifications and appropriate eligibility; "if he does, his appointment is approved; if not, it is disapproved" [*Lopez v. Civil Service Commission, 194 SCRA 269*],

4. An appointment becomes complete only when the last act required of the appointing power is performed; until the process is completed the appointee can claim no vested right in the office nor claim security of tenure. The years of service of the employee involved cannot substitute for the want of consent of another body required by law to complete the appointment [*Corpuz v. Court of Appeals, G.R. No. 123989, January 26, 1998*]. For the duration of his occupancy of the office, he is merely a *de facto* officer, because he assumed office under color of title of a known appointment which is void by reason of some defect.

5. For the appointment to be valid, the position must be vacant [*Costin v. Quimbo, 120 SCRA 159; Jocom v. Regalado, 201 SCRA 73*]. In *Gayatao v. Civil Service Commission, 210 SCRA 183*, where the reassignment by Customs Commissioner Mison of incumbent Customs Operations Chief Fernandez as Acting Chief of the Export Division of the NAIA Customs House was illegal, the subsequent appointment of Gayatao as Customs Operations Chief was null and void, because the position to which Gayatao was appointed was not vacant. In *Garces v. Court of Appeals, 259 SCRA 99*, where private respondent refused to vacate his office because he was being transferred without consent, the Supreme Court said that the appointment of the petitioner was invalid because the position to which he was appointed was not vacant.⁶

6. *Discretion of Appointing Authority.* Appointment is essentially a discretionary power and must be performed by the officer in whom it is vested according to his best lights, the only condition being that the appointee should possess the minimum qualification requirements prescribed by law for the position [*Luego v. Civil Service Commission, 143 SCRA 327; Lapinid v. Civil Service Commission, 197 SCRA 106*]. The appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. Not only is the appointing authority

primarily responsible for the administration of his office, he is also in the best position to determine who among the prospective appointees can effectively discharge the functions of the position. Thus, the final choice of the appointing authority should be respected and left undisturbed [*Civil Service Commission v. De la Cruz, G.R. No. 158737, August 31, 2004*].

a) In *Aquino v. Civil Service Commission*, 208 SCRA 240, reiterated in *Medalla v. Sto. Tomas*, 208 SCRA 351, and in *Uy v. Court of Appeals*, 286 SCRA 343, it was held that when the appointing authority has already exercised his power of appointment, the Commission cannot revoke the same on the ground that another employee is better qualified, for that will constitute an encroachment on the discretion vested in the appointing authority. The Commission may not and should not substitute its judgment for that of the appointing authority.

b) While the Civil Service Law grants career service officers preference in promotion under the "next-in-rank" rule [*Anzaldo v. Clave*, 119 SCRA 353; *Meram v. Edralin*, 154 SCRA 238], it is not mandatory that the appointing authority fill a vacancy by promotion, as the appointing authority should be allowed the choice of men of his confidence, provided they are qualified and eligible [*Espanol v. Civil Service Commission*, 208 SCRA 715; *Mantala v. Salvador*, 206 SCRA 264; *Umoso v. Civil Service Commission*, G.R. No. 110276, July 29, 1994]. For disregarding this doctrine, the CSC drew a stern rebuke from the Court in *Lapinid v. Civil Service Commission*, *supra*; warned in *Guieb v. Civil Service Commission*, G.R. No. 93935, February 9, 1994; and again "duly warned; henceforth, it disobeys at its peril", in *Mauna v. Civil Service Commission*, G.R. No. 97794, May 13, 1994.

i) Sec. 9, Chapter II, Title III, Book IV of the Administrative Code of 1987 (EO 292) provides that all provincial and city prosecutors and their assistants shall be appointed by the President upon recommendation of the Secretary of Justice. The phrase "upon recommendation of the Secretary of Justice" should be interpreted to be a mere advise, exhortation and indorsement, which is essentially persuasive in character but is not binding or obligatory upon the person to whom it is made. Accordingly, the discretion of the appointing authority still prevails [*Bermudez v. Executive Secretary*, G.R. No. 131429, August 4, 1999].

c) 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 and character of the appointment extended*, i.e., whether the appointment is permanent or temporary. In *Province of Camarines Sur v. Court of Appeals*, 246 SCRA 281, the Supreme Court reiterated the rule that the Civil Service Commission cannot

convert a temporary appointment into a permanent one, as it would constitute an arrogation of a power properly belonging to the appointing authority. The Civil Service Commission may, however, approve as 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.

7. *Judicial Review of Appointments.* Given the discretion vested in the appointing authority, an appointment is generally a political question so long as the appointee fulfills the minimum qualification requirements prescribed by law for the position. In *Tanada v. Philippine Atomic Energy Commission, supra.*, the Court held that where the validity of the appointment is not challenged in appropriate proceedings, the question of the competence of the public officer is beyond the pale of judicial inquiry.

a) An action for usurpation of office may be brought only by one who claims valid title to the office [*Bongbong v. Parazo*, 57 SCRA 623].

8. *Jurisdiction of the Civil Service Commission.* Disciplinary cases, and cases involving "personnel action" affecting employees in the Civil Service, including "appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation", as well as employment status and qualification standards, are within the exclusive jurisdiction of the Civil Service Commission. The Regional Trial Court is without jurisdiction to take cognizance of an action for quo warranto and mandamus filed by one who, claiming she is next-in-rank and better qualified, should have been extended the promotional appointment [*Mantala v. Salvador, supra.*].

a) The power of the Civil Service Commission includes the authority to recall an appointment which has been initially approved when it is shown that the same was issued in disregard of pertinent Civil Service laws, rules and regulations [*Debulgado v. Civil Service Commission*, 237 SCRA 184, reiterated in *Mathay v. Civil Service Commission*, G.R. No. 130214, August 9, 1999].

b) But the Civil Service Commission 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 the Civil Service Law. On its own, the Commission does not have the power to terminate employment or to drop members from the rolls [*University of the Philippines and Alfredo de Torres v. Civil Service Commission*, G.R. No. 132860, April 3, 2001].

C. Appointments to the Civil Service.

1. Scope of the Civil Service: Embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned and controlled corporations with original charters [Sec. 2(1), Art. IX-B],

a) In *University of the Philippines v. Regino*, 221 SCRA 598, it was held that the University of the Philippines, having been created by a special law and having an original charter, is clearly part of the Civil Service. In *Mateo v. Court of Appeals*, 247 SCRA 284, it was held that the Morong Water District, a quasi-public corporation created pursuant to PD 198, is a government-owned corporation with an original charter. Accordingly, its employees fall within the jurisdiction of the Civil Service Commission, and the RTC has no jurisdiction to entertain cases involving dismissal of officers and employees in the said water district. In *EIIB v. Court of Appeals*, G.R. No. 129133, November 25, 1998, it was held that the Economic Intelligence and Information Bureau is a government agency within the coverage of the Civil Service. Likewise, the Jose M. Rodriguez Memorial Hospital is a government hospital exercising governmental functions, and is within the coverage of the Civil Service [*Department of Health v. NLRC*, 251 SCRA 700]. The Philippine National Red Cross (PNRC) is a government-owned or controlled corporation with an original charter under RA 95, as amended. Paid staff of the PNRC are government employees who are members of the GSIS and covered by the Civil Service Law [*Camporedondo v. NLRC*, G.R. No. 129049, August 6, 1999].

b) On the other hand, in *Juco v. NLRC*, G.R. No. 98107, August 18, 1997, it was held that the employment relations in the National Housing Corporation (NHC) are within the jurisdiction of the NLRC, not the Civil Service Commission, even as the controversy arose prior to 1987, because, as held in *National Service Corporation v. NLRC*, 168 SCRA 122, it is the Constitution in place at the time of the decision which governs. In this case, the Supreme Court declared that the phrase "with original charter" refers to corporations chartered by special law, as distinguished from corporations organized under the Corporation Code.

c) In *Light Rail Transit Authority (LRTA) v. Venus*, G.R. No. 163782, March 24, 2006, the Supreme Court said that LRTA being a government-owned corporation with an original charter, employment therein is governed by civil service rules, not by the Labor Code, and is beyond the reach of the DOLE. However, METRO was originally organized under the Corporation Code and became a government-owned and controlled corporation only when it was acquired by LRTA. Thus, it is the DOLE, not the Civil Service Commission,

that has jurisdiction over disputes arising from the employment of its workers since METRO has no original charter.

d) In *Office of the Ombudsman v. Civil Service Commission, G.R. No. 162215, July 30, 2007*, it was held that the person occupying the position of Director II in the Central Administrative Service or Finance and Management Service of the Office of the Ombudsman is appointed by the Ombudsman, not by the President. As such, he is neither embraced in the Career Executive Service (CES) nor does he need to possess Career Executive Service eligibility. To classify the positions as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences, as it will result either in (1) vesting the appointing power for said position in the President, in violation of the Constitution, or (2) including in the CES a position not held by a presidential appointee, contrary to the Administrative Code.

2. Classes of Service.

a) Career Service. Characterized by entrance based on merit and fitness to be determined, as far as practicable by competitive examinations, or based on highly technical qualifications, opportunity for advancement to higher career positions, and security of tenure. The positions included are: (i) Open career positions, where prior qualification in an appropriate examination is required; (ii) Closed career positions, e.g., scientific or highly technical in nature; (iii) Career Executive Service, e.g., undersecretaries, bureau directors, etc., where the appointee is required to possess the appropriate Career Executive Service Officer (CESO) eligibility; (iv) Career officers (other than those belong to the Career Executive Service) who are appointed by the President; (v) Positions in the Armed Forces of the Philippines, although governed by a separate merit system; (vi) Personnel of government-owned or -controlled corporations with original charter; and (vii) Permanent laborers, whether skilled, semi-skilled or unskilled.ⁱ⁾

i) *Career executive service*. The two requisites that must concur in order that an employee in the career executive service may attain security of tenure are: [1] career executive service eligibility; and [2] appointment to the appropriate career executive service rank. It must be stressed that the security of tenure of employees in the career executive service (except first and second 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 career executive service officer may be transferred or reassigned from one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a career executive service 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, G.R. Nos. 143366 & 143524, January 29, 2001*]. Accordingly, where the appointee does not possess the required career executive service eligibility, his appointment will not attain permanency. On this basis, the appointment of the respondent as Ministry Legal Counsel, CESO IV, Department Legal Counsel or Director III — inasmuch as he did not possess the appropriate CESO eligibility — was merely temporary. Thus, he could be transferred or reassigned without violating security of tenure. [*Dimayuga v. Benedicto, G.R. No. 144153, January 16, 2002*].

b) Non-career service. Characterized by entrance on bases other than those of the usual tests utilized for the career service, tenure 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 the employment was made. The officers and employees embraced in the non-career service are: (i) Elective officials, and their personal and confidential staff; (ii) Department Heads and officials of Cabinet rank who hold office at the pleasure of the President, and their personal and confidential staff; (iii) Chairmen and members of commissions and boards with fixed terms of office, and their personal and confidential staff; (iv) Contractual personnel or those whose employment in 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 not exceeding one year, under their own responsibility, with the minimum direction and supervision; and (v) Emergency and seasonal personnel.

i) In *Montecillo v. Civil Service Commission, G.R. No. 131954, June 28, 2001*, the Supreme Court said that under the Administrative Code of 1987, the Civil Service Commission is expressly empowered to declare positions in the Civil Service 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 No. 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.

ii) In *Orcullo v. Civil Service Commission, G.R. No. 138780, May 22, 2001*, the co-terminous status of an officer or employee may be classified as follows: [a] co-terminous with the project, i.e., when the appointment is coexistent with the duration of a particular project for which purpose employment

was made or subject to the availability of funds for the same; [b] co-terminous with the appointing authority, i.e., when the appointment is co-existent with the tenure of the appointing authority or at his pleasure; [c] co-terminous with the incumbent, i.e., when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent, the position shall be deemed automatically abolished; and [d] coterminous with a specific period, i.e., the appointment is for a specific period and upon expiration thereof, the position is deemed abolished.

3. *Requisites.* Shall be made only according to merit and fitness to be determined, as far as practicable, and, except appointments to positions which are policy determining, primarily confidential or highly technical, by competitive examination [*Sec. 2(2), Art. IX-B*].

a) In a department, the appointing power is vested in the Department Secretary, and although such power may be delegated to the Regional Director, the same is still subject to the approval, revision, modification or reversal by the Department Secretary [*Umoso v. Civil Service Commission, supra.*].

b) In *PAGCOR v. Rilloraza, G.R. No. 141141, June 25, 2001*, three important points are underscored: [i] The classification of a particular position as policy-determining, primarily confidential or highly technical amounts to no more than an executive or legislative declaration that is not conclusive upon the courts, the true test being the nature of the position; [ii] The exemption provided in this section pertains only to exemption from competitive examination to determine merit and fitness to enter the civil service; and [iii] Sec. 16, RD. 1869, insofar as it declares all positions in PAGCOR as primarily confidential, is not absolutely binding on the courts.

c) Exempt from the competitive examination requirement are appointments to positions which are:

i) *Policy determining*, in which the officer lays down principal or fundamental guidelines or rules; or formulates a method of action for government or any of its subdivisions, e.g., a department head.

ii) *Primarily confidential*, 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 on confidential matters of state; or one declared to be so by the President of the Philippines upon recommendation of the Civil Service Commission [*De los Santos v. Mallare, 87 Phil 289; Salazar v Mathay 73 SCRA , 275*].

iia) In *Civil Service Commission and PAGCOR v. Salas*, G.R. No. 123708, June 19, 1997, the Supreme Court said that prior to the passage of the Civil Service Act of 1959, there were two recognized instances when a position may be considered *primarily confidential*, namely: (a) when the President, upon recommendation of the Civil Service Commission, has declared the position to be primarily confidential; and (b) in the absence of such a declaration, when from the nature of the functions of the office, there exists close intimacy between the appointee and the appointing authority which insures freedom of intercourse without embarrassment or freedom from misgivings or betrayals on confidential matters of State. When R.A. 2260 was enacted on June 19, 1959, Sec. 5 thereof provided that "the non-competitive or unclassified service shall be composed of positions declared by law to be in the non-competitive or unclassified service, or those which are policy-determining, primarily confidential or highly technical in nature". Thus, at least since the enactment of the Civil Service Act of 1959, it is the nature of the position which determines whether a position is primarily confidential, policy-determining or highly technical. In *Pinero v. Hechanova*, 18 SCRA 417, it was declared that executive pronouncements, such as P.D. 1869, can be no more than initial determinations that are not conclusive in case of conflict; otherwise, it would lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the constitutional protection of security of tenure. This rule prevails even with the advent of the 1987 Constitution and the Administrative Code of 1987, despite the fact that the phrase "in nature" was deleted. Furthermore, the "*proximity rule*" enunciated in *De los Santos v. Mallare*, *supra*, is still authoritative, i.e., that the occupant of a particular position could 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 State. Where the position occupied is remote from that of the appointing authority, the element of trust between them is no longer predominant, and therefore, would not be primarily confidential. Thus, in *PAGCOR v. Rilloraza*, it was held that the position of Casino Operations Manager (COM) is not a primarily confidential position. While the COM is required to exercise supervisory, recommendatory and disciplinary powers with wide latitude of authority, and he is a tier above the ordinary rank- and file employee, nonetheless, lacking is that amplitude of confidence reposed in him by the appointing authority. For one thing, he reports directly to the Branch Manager, not to the appointing authority. It becomes unmistakable that the stratum separating the COM from reporting directly to the higher echelons renders remote the proposition of proximity between the respondent and the appointing authority.

iib) In *Montecillo v. Civil Service Commission*, *supra*., the Supreme Court recognized the express authority of the Civil Service Commission, under the Administrative Code of 1987, to declare positions in

the Civil Service as primarily confidential. Accordingly, the enumeration of primarily confidential employees in the Civil Service decree is not exclusive; the Commission may supplement the same, as it did when it issued Memo Circular No. 22, s. 1991.

iii) *Highly technical*, which requires possession of technical skill or training in a supreme or superior degree. In *Besa v. Philippine National Bank, supra.*, the position of legal counsel of the PNB was declared to be both primarily confidential and highly technical, with the former aspect predominating. In *Cadiente v. Santos, 142 SCRA 280*, the position of City Legal Officer is primarily confidential, requiring the utmost degree of confidence on the part of the Mayor. In *Pacete v. Chairman, Commission on Audit, 185 SCRA 1*, the position of City Attorney was held to be both confidential and technical in nature. In *Borres v. Court of Appeals, 153 SCRA 120*, it was held that the positions of Security Officer and Security Guards of the City Vice Mayor are primarily confidential positions.

D. Other Personnel Actions.

1. *Promotion* is a movement from one position to another with increase in duties and responsibilities as authorized by law and usually accompanied by an increase in pay.

a) Next-in-rank rule. The person next in rank shall be given preference in promotion when the position immediately above his is vacated. But the appointing authority still exercises discretion and is not bound by this rule, although he is required to specify the “special reason or reasons” for not appointing the officer next-in-rank. This means that the one who is “next-inrank” is given only preferential consideration for promotion; but it does not necessarily follow that he alone and no one else can be appointed [*Panis v. Civil Service Commission, G.R. No. 102948, February 2, 1994*].

b) Automatic Reversion rule Sec. 13 of the Omnibus Rules Implementing Book V, E.O. 292, states: “All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in the lower positions and automatically restores them to their former positions. However, the affected persons are entitled to payment of salaries for services actually rendered at a rate fixed in their promotional appointments.” For this rule to apply, the following must concur: (i) there must be a series of promotions; (ii) all promotional appointments are simultaneously submitted to the Commission for approval; and (iii) the Commission disapproves the appointment of a person to a higher

position [*Divinagracia v. Sto. Tomas, G.R. No. 110954, May 31, 1995*]. In this case, the Supreme Court held that the movement of private respondent Nacario from the Budget Office to the MPDO was not a promotion, but a lateral transfer.

2. *Appointment through Certification* is issued to a person who has been selected from a list of qualified persons certified by the Civil Service Commission from an appropriate register of eligibles, and who meets all the qualifications prescribed for the position.

3. *Transfer* is a movement from one position to another which is of equivalent rank, level or salary without break in service. Under current Civil Service rules and regulations, transfer may be imposed as an administrative penalty.

a) An unconsented transfer violates security of tenure [*Palma-Fernandez v. de la Paz, 160 SCRA 751*]. A transfer that results in promotion or demotion, advancement or reduction, or a transfer that aims to lure the employee away from his permanent position, cannot be done without the employee's consent, for that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position [*Divinagracia v. Sto. Tomas, supra*]. But the appointment of the private respondent Yap being that of District Supervisor at large, she could be assigned to any station, as she is not entitled to stay permanently at any specific station [*Quisumbing v. Judge Gumban, 193 SCRA 520*].

b) However, in *Chato v. Natividad, G.R. No. 113843, June 2, 1995*, the Supreme Court sustained the legality of the reassignment of Bias from Pampanga to Cagayan, after BIR Commissioner Chato had issued Revenue Administrative Order No. 5-93 redefining the jurisdiction and re-numbering the regional district offices of the BIR. The Court found that the private respondent failed to show patent illegality in the action of the BIR Commissioner, saying that to sustain private respondent's contention that his transfer was a demotion simply because the new assignment is not to his liking would be to subordinate government projects, along with the great resources and efforts they entail, to individual preferences and opinions of civil service employees; and this would negate the principle that public office is a public trust. Moreover, the employee should have questioned the validity of his transfer by appeal to the Civil Service Commission. The lower court should have dismissed the action for failure of private respondent to exhaust administrative remedies. In any event, the movement was held to be a reassignment, made in the exigency of the service — and there was no demotion.

i) In *Teotico v. Agda*, 197 SCRA 675, it was held that the holder of a temporary appointment cannot claim a vested right to the station to which assigned, nor to security of tenure thereat. Thus, he may be reassigned to any place or station.

ii) Likewise, Career Executive Service personnel can be shifted from one office to another without violating their right to security of tenure, because their status and salaries are based on their ranks and not on the positions to which they are assigned [*Cuevas v. Bacal*, G.R. No. 139382, December 06, 2000; *General v. Roco*, G.R. Nos. 143366 & 143524, January 29, 2001].

4. *Reinstatement*. Any person who has been permanently appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, may be reinstated to a position in the same level for which he is qualified.

a) In *Gloria v. Judge de Guzman, supra.*, the Court said that private respondent's subsequent acquisition of the appropriate civil service eligibility is no reason to compel petitioners to reappoint private respondent. Acquisition of civil service eligibility is not the sole factor for reappointment. Still to be considered are performance, degree of education, work experience, training, seniority, and more importantly, whether or not the applicant enjoys the confidence and trust of the appointing power, considering that the position of Board Secretary II is primarily confidential. Reappointment to such position is an act which is discretionary on the part of the appointing power; it cannot be the subject of an application for a writ of mandamus.

b) Reinstatement is technically the issuance of a new appointment, which is essentially discretionary; such exercise of the discretionary power cannot be controlled even by the Courts, as long as it is properly exercised by the appointing authority. Thus, the order of the lower court for the reinstatement of the private respondent amounts to an undue interference by the court in the exercise of a discretionary power vested in the PSCA Board of Trustees [*Gloria v. Judge de Guzman, supra.*].

c) One who, because of conviction of a crime, has forfeited her right to the public office but was extended a plenary pardon by the President, cannot, by reason of the pardon, demand reinstatement as a matter of right [*Monsanto v. Factoran*, 170 SCRA 190]. But in *Sabello v. Department of Education, Culture & Sports*, 180 SCRA 623, the Supreme Court held that a pardoned elementary school principal, on considerations of justice and equity, should be reinstated to the same position and not to the lower position of classroom

teacher, there being no circumstances which would justify the reduction in rank.

d) In *Garcia v. Chairman, Commission on Audit*, G.R. No. L-75025, September 14, 1993, it was held that when a person is given a pardon because he did not truly commit the offense, the pardon relieves him from all punitive consequences of his criminal act, thereby restoring him to his clean name, good reputation and unstained character prior to his finding of guilt. The bestowal of executive clemency in effect completely obliterated the adverse effects of the administrative decision which found him guilty of dishonesty and ordered his separation from the service. This can be inferred from the executive clemency itself exculpating petitioner from the administrative charge and thereby directing his reinstatement, which is rendered automatic by the grant of the pardon. This signifies that petitioner need no longer apply for reinstatement; he is restored to his office *ipso facto* upon the issuance of the clemency, and he is entitled to back wages.

5. *Detail* is the movement of an employee from one agency to another without the issuance of an appointment, and shall be allowed only for a limited period in the case of employees occupying professional, technical and scientific positions. It is temporary in nature [*Republic v. Court of Appeals*, 182 SCRA 721].

6. *Reassignment*. An employee may be reassigned from one organizational unit to another in the same agency, provided that such reassignment shall not involve a reduction in rank, status or salary. Reassignment is recognized as a management prerogative vested in the Civil Service Commission and, for that matter, in any department or agency embraced in the Civil Service; it does not constitute removal without cause.

a) In *Fernandez v. Sto. Tomas, supra.*, considering that the petitioners retained their positions as Director IV and III, and they continued to enjoy the same rank, status and salary at their newly assigned stations which they enjoyed at the Civil Service Commission Head Office, there was no violation of the constitutional guarantee of security of tenure. The appointments to the staff of the CSC Head Office are not appointments to specified public offices, but rather appointments to particular positions or ranks.

b) But like detail, the reassignment should have a definite date or duration. In *Padolina v. Fernandez*, G.R. No. 133511, October 10, 2000, the reassignment of the respondent was deemed a violation of security of tenure. The lack of specific duration of the reassignment was tantamount to a floating assignment, thus a diminution in status or rank. The respondent was also

deprived of emoluments, like RATA and other allowances, thus the movement was deemed a diminution in compensation. Finally, the reassignment also removed respondent's power of supervision over 41 employees, thus deemed a diminution in status. Similarly, in *Pastor v. City of Pasig*, G.R. No. 146873, May 09, 2002, the Supreme Court found that the petitioner's reassignment to different offices in the city government was indefinite; petitioner was on virtual floating assignments amounting to reduction in rank, hence impermissible under the law.

c) In *Carino v. Daoas*, G.R. No. 144493, April 09, 2002, the Supreme Court ruled that the reassignment of petitioner was unlawful and, as earlier found by the Civil Service Commission, it was tantamount to transfer without consent. On the question whether or not petitioner should have, in the meanwhile, complied with the reassignment order, and whether she can be considered AWOL for her refusal to report to her new assignment during the pendency of respondent's appeal, the Supreme Court noted that it was not the petitioner, but the respondent who appealed to the CSC from the CSC Regional Office's finding that the petitioner's reassignment was "not in order". The CSC Regional Office's finding must be accorded the presumption of regularity. Petitioner cannot be considered on AWOL, as she continued to report to her original station.

7. *Reemployment*. Names of persons who have been appointed permanently to positions in the career service and who have been separated as a result of reduction in force and/or reorganization, shall be entered in a list from which selection for reemployment shall be made. ⁱ⁾

i) See Sec. 16, Art. XVIII, which provides that career civil service employees separated from the service not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986, and the reorganization following the ratification of the Constitution, shall be entitled to appropriate separation pay, and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation. In lieu of separation pay, at the option of the employees, they may be considered for employment in the government, or in any of its subdivisions, etc.. This provision shall also apply to career officers whose resignation, tendered in line with the existing policy, had been accepted. See *Ortiz v. Comelec*, 162 SCRA 812.

V. POWERS AND DUTIES OF PUBLIC OFFICERS

A. Authority of Public Officers.

1. *The authority of public officers* consists of those powers which are: (a) Expressly conferred upon him by the act appointing him; (b) Expressly annexed to the office by law; and (c) Attached to the office by common law as incidents to it. Under the *doctrine of necessary implication*, all powers necessary for the effective exercise of the express powers are deemed impliedly granted.

2. *The authority* can be exercised *only* during the term when the public officer is, by law, invested with the rights and duties of the office. In *Jandaya v. Ruiz*, 95 SCRA 562, where the decision penned by Judge Marquez was promulgated by Judge Ruiz after Marquez had already retired, the Supreme Court held that the decision had no binding effect. In *Lao v. To Chip*, 158 SCRA 243, the decision promulgated by the division of the Court of Appeals was ruled to be null and void, considering that it was promulgated after the justices had been notified of the acceptance of their resignation.

a) In *People v. Garcia*, G.R. No. 126252, August 30, 1999, it was held that although the effectivity of Judge de Guzman's disability retirement was made retroactive to February 16, 1996, it cannot be denied that at the time the subject decision was promulgated on February 20, 1996, he was still the incumbent judge of the RTC Branch LX of Baguio City, and had, in fact, continued to hold said office and act as judge thereof until his application for retirement was approved in June, 1996. Accordingly, the decision under review was held to have been validly promulgated.

B. Ministerial and discretionary powers.

1. *Ministerial*: one the discharge of which by the officer concerned is imperative and requires neither judgment nor discretion [*Lamb v. Phipps*, 22 Phil 456]. The exercise of ministerial powers may be compelled [*Corpus v. Commanding General, Philippine Army*]. The Sheriff's role in the execution of judgment is purely ministerial; he has no discretion whether to execute a judgment or not [*Aristorenas v. Molina*, A.M. No. P-94-1030, July 4, 1995].²

2. *Discretionary*: one imposed by law upon a public officer wherein the officer has the right to decide how and when the duty shall be performed [*Lamb v. Phipps, supra*].

a) Mandamus will not lie to compel the performance of a discretionary power [*Avenue Arrastre v. Commissioner of Customs*, 120 SCRA 878].

i) But where there is grave abuse of discretion, manifest injustice or palpable excess of authority equivalent to a denial of a settled right to which the petitioner is entitled, and where there is no other plain, speedy or adequate remedy, the writ of mandamus will issue [*First Philippine Holdings Corporation v. Sandiganbayan*, 253 SCRA 30, reiterated in *Angchangco v. Ombudsmap*, 268 SCRA 301 and in *Lopez, Jr. v. Office of the Ombudsman*, G.R. No. 1405219, September 6, 2001].

ii) In *Sharp International Marketing v. Court of Appeals*, 201 SCRA 299, the Supreme Court said that while mandamus will not lie to control discretion, the writ may issue to compel the exercise of discretion, but not the discretion itself. Likewise, in *BF Homes v. National Water Resources Council*, 154 SCRA 88, the Court held that mandamus will not lie to compel a body discharging discretionary powers to act in a particular way, or to approve or disapprove a particular application. But the petitioner is entitled to a writ that would require the respondent Council to consider and deliberate upon the applications before it, examining in that process whatever evidence lies before it, and to act accordingly, either approving or disapproving the applications, in accordance with applicable law and jurisprudence and in the best interest of the community involved.

b) Note that in the 2nd par., Sec. 1, Art. VIII, of the Constitution, the courts may review the exercise of discretion, to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction committed by any government agency or instrumentality.

c) Judgment v. Discretion. *Judgment* is a judicial function, the determination of a question of law. There is only one way to be right. *Discretion* is the faculty conferred upon a court or other officer by which he may decide the question either way and still be right [*Asuncion v. de Yriarte*, 28 Phil 67]. But discretion, as exercised, is limited to the evident purpose of the act, i.e., sound and legal discretion, not arbitrary, capricious or oppressive proceedings.

C. Duties of Public Officers.

1. General (Constitutional) duties of public officers:

a) *To be accountable to the people; to serve them with utmost responsibility, integrity, loyalty and efficiency; to act with patriotism and justice; and to lead modest lives [Sec. 1, Art. XI].*

b) *To submit a declaration under oath of his assets, liabilities and net worth upon assumption of office and as often thereafter as may be required by law [Sec. 17, Art. XI].*

c) *To owe the State and the Constitution allegiance at all times [Sec. 18, Art. XI].*

2. *Specific cases:*

a) The Solicitor General's duty to represent the government, its offices and instrumentalities and its officials and agents — except in criminal cases or civil cases for damages arising from felony — is mandatory. Although he has discretion in choosing whether or not to prosecute a case or even withdraw therefrom, such discretion must be exercised within the parameters set by law and with the best interest of the State as the ultimate goal [*Gonzales v. Chavez, 205 SCRA 817*].

b) The government is not estopped from questioning the acts of its officials, more so if they are erroneous or irregular [*Sharp International Marketing v. Court of Appeals, 154 SCRA 88*],

D. Prohibitions.

1. *Partisan political activity.* “*No officer or employee of the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign*” [Sec. 2(4), Art. IX-B]. The Civil Service Law prohibits engaging directly or indirectly in any partisan political activity or taking part in any election except to vote; or use official authority or influence to coerce the political activity of any person or body.

a) Armed Forces. “*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*” [Sec. 5(3), Art. XVI],

i) But only active members, not those in the reserve force, are covered by the prohibition [*Cailles v. Bonifacio, 124 SCRA 1*],

b) The prohibition does not prevent expression of views on current political problems or issues, or mention of the names of candidates for public office whom public officer supports.

c) Exempt from this prohibition are those holding political offices, but it shall be unlawful for them to solicit contributions from their subordinates or

subject them to any of the acts involving subordinates prohibited in the Election Code. Members of the Cabinet are, thus, exempt from this prohibition [*Santos v. Yatco*, 106 Phil 745].

d) This prohibition should be distinguished from the provision of Sec. 79, BP 881 which makes it unlawful for any person or any political party to engage in election campaign or partisan political activity except during the campaign period. Under *Sec. 79, BP 881*, election campaign or partisan political activity refers to an act designed to promote the election or defeat of a particular candidate or candidates to public office. If done for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, etc., it shall not be considered as election campaign or partisan political activity.

2. *Additional or double 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*” [Sec. 8, Art. IX-B],

a) But note that pensions or gratuities shall not be considered as additional, double or indirect compensation. In *Santos v. Court of Appeals*, G.R. No. 139792, November 22, 2000, the Supreme Court said that this provision simply means that the retiree can continue to receive such pension or gratuity even after he accepts another government position to which another compensation is attached. But he cannot credit his years of service in the Judiciary (for which he now receives his pension or gratuity under RA 910) in the computation of the separation pay to which he may be entitled under RA 7924 for the termination of his last employment. To allow this would be to countenance double compensation for exactly the same services.

3. *Prohibition against loans.* “*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, the Constitutional Commissions, and the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure*” [Sec. 16, Art. XI].

4. *Limitation on Laborers.* Shall not be assigned to perform clerical duties.⁵

5. *Detail or reassignment.* No detail or reassignment shall be made within three months before any election without the approval of the Comelec.

6. *Nepotism.* All appointments made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are prohibited. The prohibition covers all appointments, including designations, in the national, city and municipal governments, or in any branch or instrumentality thereof, including government-owned or controlled corporations with original charters. See *Laurel v. Civil Service Commission*, 203 SCRA 195.

a) Under the Omnibus Rules Implementing E.O. 292, the original appointment — and all subsequent personnel actions, such as promotion, transfer, reinstatement, etc., must conform with the rule against nepotism; otherwise, the prohibition would be rendered “meaningless and toothless” [*Debulgado v. Civil Service Commission*, G.R. No. 111471, September 26, 1994].

b) “Relative” is to be understood to mean those related within the third civil degree by consanguinity or affinity. Exempt are persons employed in a confidential capacity; teachers; physicians; and members of the Armed Forces of the Philippines, provided that in each particular instance full report of such appointment shall be made to the Commission.

c) In *Civil Service Commission v. Dacoycoy*, G.R. No. 135805, April 29, 1999, the respondent Vocational School Administrator of Balicuatro College of Arts and Trades was found guilty of nepotism, because although he did not appoint or recommend his two sons to the positions of driver and utility worker of the school, “the unseen but obvious hand of the respondent” was behind the appointment.

VI. LIABILITY OF PUBLIC OFFICERS

A. *General Rule on Liability.* A public officer is not liable for injuries sustained by another as a consequence of official acts done within the scope of his official authority, except as otherwise provided by law.

1. A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or negligence [Sec. 38(1), Chapter 9, Book I, *Administrative Code of 1987*], See *Blaquera v. Alcala, G.R. No. 109406, September 11, 1998.*

2. No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for wilful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors [Sec. 39, Chapter 9, Book I, *Administrative Code*].

3. But under Sec. 24, *Local Government Code*, it is explicitly provided that local governments and their officials are not exempt from liability for death or injury to persons or damage to property.

B. *Statutory Liability.*

1. *Art. 27, Civil Code:* Any person suffering moral or material loss because a public officer refuses or neglects, without just cause, to perform his official duty, may file an action for damages and other relief against the public officer. This is without prejudice to administrative disciplinary action against the officer.

2. *Art. 32, Civil Code:* Liability of public officer for violation of constitutional rights of individuals. See *Aberca v. Ver, 160 SCRA 601.*

3. *Art. 34, Civil Code:* Liability of peace officers who fail to respond or give assistance to persons in danger of injury to life or property. [Note: The municipal corporation is subsidiarily liable.]⁴

4. *Sec. 38(2), Chapter 9, Book I, Administrative Code:* Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

C. Liability on Contracts. The public officer shall be personally liable on contracts he enters into if he acted without, or exceeded his, authority.

D. Liability for Tort. The public officer shall be personally liable if he goes beyond the scope of his authority, or exceeds the powers conferred upon him by law.

1. In *Chavez v. Sandiganbayan*, 193 SCRA 282, the Supreme Court said that public officials can be held personally accountable for acts claimed to be performed in connection with official duties where their actions are *ultra vires* or where there is a showing of bad faith. The immunity granted to PCGG officials under Executive Order No. 1 is not an absolute immunity; it merely refers to immunity from liability for damages in the official discharge of their task, much in the same manner that judges are immune from suit in the official discharge of the functions of their office. In *Shaufv. Court of Appeals*, 191 SCRA 713, it was held that unauthorized acts of government officials are not acts of State, and so the public officer may be held personally liable in damages for such unauthorized acts. Where a public official acted in *ultra vires*, or where there is a showing of bad faith, the officer can be held personally accountable for acts claimed to have been performed in connection with official duties [*Wylie v. Rarang*, 209 SCRA 357]. In *Rama v. Court of Appeals*, 148 SCRA 496, provincial officials of Cebu were held liable in their personal capacity for illegally and in bad faith dismissing employees in the Provincial Engineer's Office. In this case, it was shown that the dismissal was effected for partisan political reasons. In *Pilar v. Sangguniang Bayan of Dasol, Pangasinan*, 128 SCRA 173, the Mayor was held personally liable for vetoing, without just cause, the Sanggunian ordinance appropriating the needed amount for the salary of the petitioner. In *Correa v. CPI of Bulacan*, 92 SCRA 312, the Mayor who illegally dismissed employees was held personally liable, even if at the time of execution of judgment, he was no longer the Mayor.

2. However, in *Alinsugay v. Court of Appeals*, 148 SCRA 521, it was held that in the absence of malice, provincial board members who disapproved the appointments of laborers are not personally liable. In *Ynot v. Intermediate Appellate Court*, *supra*., the police station commander who confiscated petitioner's carabaos was held not personally liable in damages for enforcing Executive Order No. 626-A, because the executive order was presumptively valid, and it was his duty to enforce it.

E. Presidential immunity from suit. This privilege is enjoyed only during the tenure of the President.¹

1. After his tenure, the Chief Executive cannot invoke immunity from suit for civil damages arising out of acts done by him while he was President which

were not performed in the exercise of official duties [*Estrada v. Desierto*, G.R. No. 146710-15, March 2, 2001].

2. In *Soliven v. Makasiar*, 167 SCRA 393, the Supreme Court declared that while the President is immune from suit, she may not be prevented from instituting suit. In *Forbes v. Chuoco Tiaco*, 16 Phil 534, it was held that the President is immune from civil liability.

F. Threelfold Liability Rule. The wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability.

1. An action for each can proceed independently of the others. Dismissal of the criminal action does not foreclose the institution of an administrative action [*Office of the Court Administrator v. Enriquez*, 218 SCRA 1],

2. Relief from criminal liability does not carry with it relief from administrative liability [*Police Commission v. Lood*, 96 SCRA 819]. In *Ocampo v. Office of the Ombudsman*, G.R. No. 114683, January 18, 2000, this principle was reiterated. The Supreme Court said that the dismissal of the criminal case will not foreclose administrative action or give the accused a clean bill of health in all respects. After all, there is a difference in the quantum of evidence required: in criminal cases, conviction requires proof of guilt beyond reasonable doubt, while in administrative cases, what is required is merely substantial evidence. The same rule was applied in *Mollaneda v. Umacob*, G. R. No. 140128, June 6, 2001.

G. Liability of Ministerial Officers.

1. *Nonfeasance*: Neglect or refusal to perform an act which is the officer's legal obligation to perform.

2. *Misfeasance*: Failure to use that degree of care, skill and diligence required in the performance of official duty.

3. *Malfeasance*: The doing, through ignorance, inattention or malice, of an act which he had no legal right to perform.

H. Command Responsibility. A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of [Sec. 38(3), Chapter 9, Book I, *Administrative Code*].

VII. RIGHTS OF PUBLIC OFFICERS

A. *Right to Office.* The just and legal claim to exercise the powers and the responsibilities of the public office.

1. *Term v. Tenure.* Term is the period during which the officer may claim to hold the office as of right; while tenure is the period during which the officer actually holds office. In *Nunez v. Averia*, 57 SCRA 726, it was held that the extension of the tenure of elective local officials beyond their term is predicated on having been duly elected in the November 8, 1971 elections.

B. *Right to Salary.*

1. *Salary* is the personal compensation to be paid to the public officer for his services, and it is generally a fixed annual or periodical payment depending on the time and not on the amount of the services he may render. It is distinguished from wages, in that salary is given to officers of higher degree of employment than those to whom wages are given; salary is regarded as compensation per annum, while wages are paid day by day or week by week.

2. *Basis:* The legal title to the office and the fact that the law attaches compensation to the office.

a) In *Dimaandal v. Commission on Audit*, 291 SCRA 322, the petitioner, a Supply Officer II who was designated by the Provincial Governor as Assistant Provincial Treasurer for Administration, was declared not entitled to claim the difference between the salary and representation allowance of Assistant Provincial Treasurer and Supply Officer II, because the Provincial Governor was without authority to designate petitioner, the power being vested in the Secretary of Finance under the Local Government Code. Because petitioner's designation was without color of authority, the right to salary or to an allowance due from the said office never existed.

b) Right of a *de facto* officer to salary: Where there is no *de jure* officer, a *de facto* officer who, in good faith, has possession of the office and has discharged the duties thereof, is entitled to salary. See *Menzon v. Petilla, supra.*; *Civil Liberties Union v. Executive Secretary, supra.*; *Rodriguez v. Tan, supra.*; *Monroy v. Court of Appeals, supra..*

c) Salary cannot be garnished. The salary of a public officer cannot, by garnishment, attachment, or order of execution be seized before being paid

to him, and appropriated to the payment of his debts. Public policy also prohibits the assignment of unearned salaries or fees. Agreements affecting compensation are void as contrary to public policy.

d) Where, on account of reorganization, the position is abolished, and the incumbent thereof requests retention and even accepts an appointment to a lower position, she cannot demand that she be paid the salary equivalent to that of her former position, because she is now barred by estoppel from claiming the desired relief [*Manalo v. Gloria*, G.R. No. 106692, September 1, 1994].

e) But compensation, allowances and other benefits received by government officials and employees without the requisite approval or authority of the Department of Budget and Management (DBM) are unauthorized and irregular. It is within the turf of the DBM Secretary to disallow the upgrading, reclassification and creation of additional plantilla positions in the Commission on Human Rights, based on its finding that such scheme lacks legal justification. The Commission on Human Rights is not a constitutional commission; it does not enjoy fiscal autonomy [*Commission on Human Rights Employees Association v. Commission on Human Rights*, G.R. No. 155336, November 25, 2004].

f) The Commission on Audit has the authority to order the withholding of an officer's salary and other emoluments up to the amount of his alleged shortage, but not to apply the withheld amount to the alleged shortage for which her liability is still being litigated [*Santiago v. Commission on Audit*, G.R. No. 146824, November 21, 2007].

3. Some constitutional provisions affecting salaries:

a) No increase in the salaries of members of Congress shall take effect until after the expiration of the full term of the Members of the Senate and House of Representatives who approved the increase [Sec. 10, Art. VI]. See *Ligot v. Mathay, supra..*

b) Salaries of the President and Vice President shall be fixed by law and shall not be decreased during their tenure. No increase shall take effect until after the expiration of the term of the incumbent during which such increase was approved [Sec. 6, Art. VII].

c) The salary of members of the Judiciary shall not be decreased during their continuance in office [Sec. 10, Art. VIII]. See *Nitafan v. Tan*, 152 SCRA 284, which is authority for the rule that the imposition of income taxes on salaries of judges does not constitute unconstitutional diminution of salaries.

d) Additional, double or indirect compensation are prohibited, unless specifically authorized by law [Sec. 8, Art. IX-B].

e) Standardization of compensation [Sec. 5, Art. IX-B]. R.A. 6758 (Salary Standardization Law) was passed in compliance with the constitutional provision.

i) In *Intia v. Commission on Audit*, G.R. No. 131529, April 30, 1999, it was held that the discretion of the Philippine Postal Corporation Board of Directors on the matter of personnel compensation is not absolute, as the same must strictly conform with R.A. 6758 in relation to the General Appropriations Act.

ii) In *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, the Supreme Court said that while the "policy determination" argument may support the inequality of treatment of the rank-and-file employees and the officers of BSP, it cannot justify the inequality of treatment between BSP rank-and-file employees and the employees of other Government Financing Institutions (who are exempted from the Salary Standardization Act by their respective charters).

iii) In *De Jesus v. Commission on Audit*, G.R. No. 127515, May 10, 2005, the Supreme Court upheld the entitlement of LWUA officials and employees to the rice subsidy, since it was shown that the benefit has been existing prior to the effectiveness of RA 6758, that it has not been included in the standardized salary rates, and that the grant thereof is limited to incumbents as of July 1, 1989 (in order not to upset the policy of non-diminution of pay). In this case, it was also reiterated that DBM Corporate Compensation Circular No. 10, issued October 2, 1989, was ineffective, because it was not published either in the Official Gazette or in a newspaper of general circulation in the country.

f) Separation pay to be given to career Civil Service employees who are separated from the service not for cause but by reason of reorganization [Sec. 16, Art. XVIII].⁴

4. *Preventive suspension and the right to salary*. In *Gloria v. Court of Appeals*, G.R. No. 131012, April 21, 1999, the Supreme Court clarified that there are two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension, viz: (a) preventive suspension pending investigation under Sec. 51, Book V, Title I, Subtitle A of the Administrative Code of 1987; and (b) preventive suspension pending appeal if the penalty imposed by the disciplining authority is

dismissal and, after review, the respondent is exonerated under Sec. 47 of the same Code. It was then held that the employee has no right to compensation during preventive suspension pending investigation, even if he is exonerated, because in order to be entitled to payment of back salaries, it is not enough that an employee be exonerated of the charges against him. In addition, it must be shown that his suspension is unjustified. The preventive suspension of civil service employees charged with dishonesty, oppression, grave misconduct or neglect of duty, is authorized by the Civil Service Law. It cannot, therefore, be considered "unjustified" even if later the charges are dismissed. It is one of the sacrifices which holding a public office requires for the public good.

a) However, if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated, the civil service officer or employee is entitled not only to reinstatement but also to back salaries for the period of preventive suspension pending appeal [*Gloria v. Court of Appeals, supra.*].

5. *Right to back salaries of illegal dismissed employee.* The Court has, time and again, held that an illegally dismissed government employee who is later ordered reinstated is entitled to back wages and other monetary benefits from the time of his illegal dismissal up to his reinstatement. The policy of "no work, no pay" cannot be applied, for such distressing state of affairs was not of her own making. To withhold her back salaries and benefits during her illegal dismissal would put to naught the constitutional guarantee of security of tenure for those in the civil service [*Constantino-David v. Pangandaman-Gania, G.R. No. 156039, August 14, 2003*].

a) Thus, in *Civil Service Commission v. Gentallan, G.R. No. 152833, May 9, 2005*, (and *Municipality of Jasaan, Misamis Oriental v. Gentallan, G.R. No. 154961, May 9, 2005*), the Supreme Court, in agreement with the Court of Appeals that the respondent was qualified and eligible for the position of local civil registrar, and finding that there was no factual or legal basis for her removal from the position, ruled that as an illegally dismissed government employee who is later ordered reinstated, the respondent is entitled to back wages and other monetary benefits from the time of her illegal dismissal up to her reinstatement.

b) However, in *Balitaosan v. Secretary, DECS, G.R. No. 138238, September 2, 2003*, it was held that where the reinstatement was not the result of exoneration but an act of liberality of the Court of Appeals, the claim for back wages for the period during which the employee was not allowed to work must be denied. In this case, the Court noted that the petitioner participated in the mass action which resulted in the filing of charges against him and his

subsequent dismissal from the service. He was ordered reinstated by the Court of Appeals only as an act of liberality. The general rule, then, is that a public official is not entitled to compensation if he has not rendered any service.

c) Likewise, in *Brugada v. Secretary of Education*, G.R. No. 14233243, January 31, 2005, the Supreme Court held that the petitioners have no right to back wages because they were neither exonerated nor unjustifiably suspended.

6. *Right to additional allowances and benefits.* Under the Local Government Code (R.A. 7160), local government units may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, is not without limitations. Where, as in this case, it runs counter to R.A. 6758, then the grant of financial assistance given by Marikina City to its Auditing Office is in excess of its powers. The equal protection clause is not entrenched, because COA officials may be treated differently from other national government officials. For one, they should be "insulated for unwarranted influences so they can act with independence and integrity". There has been no repeal by R.A. 7160 of R.A. 6758. They can be harmonized and applied together.

C. *Right to Preference in Promotion.* See *Meram v. Edralin*, 154 SCRA 238. But the right does not prevail over the discretion of the appointing authority [*Luego v. Civil Service Commission, supra*.].

D. *Right to vacation and sick leave.*

1. In *Maleniza v. Commission on Audit*, 179 SCRA 408, it was held that elective officials, e.g., municipal mayor, are not entitled to accrued vacation and sick leave credits, because they have no official hours of work. Note: This ruling may now be deemed abandoned in view of the specific provision of Sec. 81, R.A. 7160 [Local Government Code] that elective local officials shall be entitled to the same leave privileges as those enjoyed by appointive local officials, including the cumulation and commutation thereof.²

2. In *Request of CTA Presiding Judge Alex Reyes*, 216 SCRA 728, it was held that under Office of the President Memorandum Circular No. 54, dated March 24, 1988, government officers or employees are now entitled to commutation of all leave credits without limitation and regardless of the period when the credits were earned, provided the claimant was in the service as of January 9, 1986.

3. In *Peralta v. Civil Service Commission*, 212 SCRA 425, the Supreme Court ruled that government employees, whether or not they have accumulated leave credits, are not required by law to work on Saturdays, Sundays and holidays, and thus cannot be declared absent on such non-working days. Accordingly, they cannot and should not be deprived of their salary corresponding to said non-working days just because they were absent without pay on the day immediately prior to, or after said non-working days. A different rule would constitute deprivation of property without due process of law.

E. Right to Maternity Leave.

F. Right to Retirement Pay.

1. Retirement laws are liberally construed in favor of the retiree [*Profeta v. Drilon*, 216 SCRA 777]. Thus, in *GS/S v. Civil Service Commission*, 245 SCRA 179, the period when respondent was paid on a per diem basis was held creditable for purposes of retirement, it being clear that the per diem received was paid for performance of services and not an allowance for expenses incurred while the respondent was away from home base. See also *Conte v. Commission on Audit*, 264 SCRA 19, where it was held that the petitioners should be allowed to avail of retirement benefits under R.A. 1616, after the Commission on Audit disallowed their claim for entitlement to additional benefits granted by SSS Resolution No. 56-71 (which was adopted in order to induce employees to retire under R.A. 660).

2. The well-settled rule is that the money value of the terminal leave of a retiring government official shall be computed at the retiree's highest monthly salary. In *Belicena v. Secretary of Finance*, G.R. No. 143190, October 17, 2001, it was held that petitioner's highest monthly salary, for purposes of computing his terminal leave pay, should be that corresponding to the salary of the Secretary of Finance which he received as Acting Secretary of Finance. When the President designated the petitioner as Acting Secretary of Finance on May 22, 1997, he did so under a well-considered opinion that the absence of Secretary Ocampo was of such an extent that the latter would be unable to perform his duties and, by reason of such opinion, the President extended a temporary designation to the petitioner consistent with Sec. 17, Administrative Code of 1987. Even the Commission on Audit has opined that a government official appointed or designated in an acting capacity pursuant to the Administrative Code is entitled to salary differential, and that his highest monthly salary for purposes of computing his terminal leave pay shall include such salary differential.³

3. In *Cena v. Civil Service Commission*, 211 SCRA 179, it was held that CSC Memorandum Circular No. 27, allowing extension of service only for one

year (instead of what is needed to complete the 15-year service requirement for retirement), cannot prevail over Sec. 11 (b), PD 1146, which allows extension in order to complete the 15-year service requirement. This ruling was re-examined and modified in *Raborv. Civil Service Commission, G.R. No. 111812, May 31, 1995*, where the Supreme Court said that when it enunciated the *Cena* ruling, it took the narrow view on what subordinate rule-making by an administrative agency is permissible and valid, and it likewise laid heavy stress on the interest of retirees by allowing extension of services without considering the significance of the general principle of compulsory retirement at the age of 65. Henceforth, CSC MC No. 27, series of 1990, is deemed valid and effective, and Sec. 11, P.D. 1146, is to be read together with CSC MC 27. However, the head of the agency is vested with discretionary authority to allow or disallow extension of service of an official or employee who has reached 65 without completing 15 years of government service, although this discretion is to be exercised conformably with CSC MC 27.

4. In the judiciary, however, the Court allows such extension if satisfied that the career of the retiree was marked by competence, integrity and dedication to public service [*In Re: Gregorio Pineda, 187 SCRA 469*]. See also *Cruz v. Tantuico, 166 SCRA 670*.

5. Pursuant to E.O. 79-86, a reserved officer who satisfactorily rendered a total of ten years continuous active commissioned military service shall not be reverted to inactive status except for cause or upon his own request. Accordingly, they are covered by compulsory membership in the GSIS [*GSIS v. Commission on Audit, G.R. No. 125982, January 22, 1999*].

6. Liberally interpreting the provisions of R.A. 910, along the lines of *Profeta v. Drilon, supra.*, the Supreme Court approved the recommendation that the retirement benefits of Justice Jorge Imperial shall be computed on the basis of the highest salary, emoluments and allowances he received as Acting Presiding Justice of the Court of Appeals [*Request of Clerk of Court Tessie L. Gatmaitan For Payment of Retirement Benefits of CA Associate Justice Jorge S. Imperial, A.M. No. 97-77-RET, August 26, 1999*].⁷

7. But in *Gamogamo v. PNOC Shipping & Transport Corp., G.R. No. 141707, May 07, 2002*, the Supreme Court rejected the petitioner's contention that for the purpose of computing his retirement pay, his 14 years of service with the Department of Health should be tacked in and added to the creditable service later rendered in two government-owned and controlled corporations without an original charter. Totalization of service credits is only resorted to when the retiree does not qualify for benefits in either or both of the Systems.

G. Others.

1. Right to reimbursement for expenses incurred in the due performance of his duty. But a public officer who uses a government vehicle is not entitled to, nor can he charge, a transportation allowance [*Domingo v. Commission on Audit*, G.R. No. 112371, October 7, 1998].
2. Right to be indemnified against any liability which they may incur in the *bona fide* discharge of their duties.
3. Right to longevity pay

VIII. TERMINATION OF OFFICIAL

A. **Modes of terminating official relationship:**

1. Expiration of term or tenure.
2. Reaching the age limit.
3. Resignation.
4. Recall
5. Removal.
6. Abandonment.
7. Acceptance of an incompatible office.
8. Abolition of office
9. Prescription of the right to office.
10. Impeachment
11. Death
12. Failure to assume elective office within six months from proclamation
13. Conviction of a crime.
14. Filing of a certificate of candidacy

B. **Expiration of term or tenure.**

1. *Distinction between term and tenure:* *Term* is the period of time during which a public officer has the right to hold the public office; *tenure* is the period of time during which the public officer actually held office.

a) When a public officer holds office at the pleasure of the appointing authority, his being replaced shall be regarded as termination through expiration of term, not removal. See *Astraquillo v. Manglapus*, 190 SCRA 280.

b) Where the Constitution provides that the term of office of local elective officials is three (3) years, Congress cannot, by a law calling for delayed elections, effectively reduce the term [*Osmena v. Comelec*, 199 SCRA 750].

c) Upon the change of government brought about by the EDSA Revolution, the acceptance by the President of the "courtesy resignations" of constitutional officers with fixed terms of office resulted in the expiration of term (or tenure), entitling the officers to retirement benefits [*Ortiz v. Comelec*, 162 SCRA 812; *In Re: Retirement of Justice Britanico*, 173 SCRA 421].

d) In *Gloria v. Judge de Guzman*, *supra*., it was held that there was no termination in the sense that termination presupposes an overt act committed

by a superior officer. What happened was that the private respondents' appointments or employment simply expired, either by their own terms, or because they may not exceed one year, but most importantly, because PAFCA was dissolved and replaced by PSCA.

2. *Commencement of the term of office.* Rules:

- a) Where the statute fixes a period within which a chosen officer may arrange his affairs and qualify for the office in a prescribed manner, his term begins upon qualification.
- b) Where no time is fixed by law for the commencement of his official term, it begins from the date of appointment in cases of an appointive office, or from the date of election, in case of an elective office.
- c) Where the law fixing the term of a public office is ambiguous, the one that fixes the term at the shortest period should be followed.
- d) Where both the duration of the term of office and the time of its commencement or termination are fixed by constitutional or statutory provisions, a person elected or appointed to fill the vacancy in such office shall hold the same only for the unexpired portion of the term.
- e) Where only the duration of the term is fixed, but no time is established for the beginning or end of the term, the person selected to fill the vacancy in such office may serve the full term and not merely the unexpired balance of the prior incumbent's term.
- f) Where an office is created, or an officer is appointed, for the purpose of performing a single act or the accomplishment of a given result, the office terminates and the officer's authority ceases with the accomplishment of the purposes which called it into being.³

3. *The Principle of Hold-Over.* In the absence of any express or implied constitutional or statutory provision to the contrary, the public officer is entitled to hold his office until his successor shall have been duly chosen and shall have qualified. The purpose of the hold-over principle is to prevent a hiatus in public service. The principle was reiterated in *Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, where the Supreme Court said that although B.R. 51 does not authorize a Sangguniang Kabataan Chairman who sits as a Sangguniang Bayan member to continue to occupy his post after the expiration of his term in case his successor fails to qualify, it does not also say that he is proscribed from holding over. The

must be clearly expressed or at least implied in the legislative enactment, otherwise, it is reasonable to assume that the law-making body favors the same.

- a) But see Art. 237, Revised Penal Code, which penalizes any public officer who shall continue to exercise the duties and powers of his office beyond the period provided by law.
- b) During this period of hold-over, the public officer is a de jure officer.
- c) When the law fixes a specific date for the end of the term, there is an implied prohibition against hold-over.

C. Reaching the Age Limit.

- 1. *Compulsory retirement age*: Seventy (70) years of age for members of the Judiciary; sixty-five (65) for other government officers and employees. See the new GSIS Charter.
 - a) Special retirement laws, e.g., R.A. 1616, which allows optional retirement after an officer has rendered a minimum number of years of government service, when availed of by the public officer, will result in termination of official relationship through reaching the age limit (or retirement).

- 2. *Retirement Benefits*. Retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose [*In Re: Amount of Monthly Pension of Judges*, 190 SCRA 315; *Profeta v. Drilon*, 216 SCRA 728]. See *GSIS v. Civil Service Commission*, 245 SCRA 179, and *Conte v. Commission on Audit*, 264 SCRA 19. But in *Gamogamo v. PNOC Shipping & Transport Corp*, *supra*., the Supreme Court denied the tacking in of 14 years of service with the Department of Health and adding the same to the creditable service rendered to two government-owned and -controlled corporations without original charters.

- a) In *Cena v. Civil Service Commission*, 211 SCRA 179, it was held that CSC Memorandum Circular No. 27, allowing extension of service only for one year (instead of what is needed to complete the 15-year service requirement for retirement), cannot prevail over Sec. 11 (b), PD 1146, which allows extension in order to complete the 15-year service requirement. This ruling was re-examined and modified in *Rabor v. Civil Service Commission*, G.R. No. 111812, May 31, 1995, where the Supreme Court said that when it

enunciated the Cena ruling, it took the narrow view on what subordinate rule-making by an administrative agency is permissible and valid, and it likewise laid heavy stress on the interest of retirees by allowing extension of services without considering the significance of the general principle of compulsory retirement at the age of 65. Henceforth, CSC MC No. 27, series of 1990, is deemed valid and effective, and Sec. 11, P.D. 1146, is to be read together with CSC MC 27. However, the head of the agency is vested with discretionary authority to allow or disallow extension of service of an official or employee who has reached 65 without completing 15 years of government service, although this discretion is to be exercised conformably with CSC MC 27.

b) In the judiciary, however, the Court allows such extension if satisfied that the career of the retiree was marked by competence, integrity and dedication to public service [*In Re: Gregorio Pineda*, 187 SCRA 469]. See also *Cruz v. Tantuico*, 166 SCRA 670.

c) When the retiree has satisfied the requirements for retirement under more than one subsection of Sec. 12, C.A. 108, as amended, he is entitled to choose the subsection under which he wants to retire [*Lopez v. Court of Appeals*, G.R. No. 104158, November 6, 1992], See also *Conte v. Commission on Audit*, *supra..*

D. Resignation. The act of giving up or the act of a public officer by which he declines his office and renounces the further right to use it. It is an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce and relinquish the office and the acceptance thereof by competent and lawful authority [*Ortiz v. Comelec*, 162 SCRA 812].

1. *Voluntariness* as an element of resignation. Resignation must be voluntary on the part of the public officer. When procured by fraud or by duress, the resignation may be repudiated. A “courtesy resignation” lacks the element of voluntariness and is, therefore, not a valid resignation. See *Ortiz v. Comelec*, 162 SCRA 212.

a) In *Joseph Ejercito Estrada v. Gloria Macapagal Arroyo*, G.R. No. 146738, March 2, 2001, the Supreme Court said that the resignation of President Estrada could not be doubted as confirmed by his leaving Malacanang. In the press release containing his final statement, [i] he acknowledged the oathtaking of the respondent as President; [ii] he emphasized he was leaving the palace for the sake of peace and in order to begin the healing process (he did not say that he was leaving due to any kind of disability and he was going to reassume the Presidency as soon as the disability disappears); [iii] he expressed his gratitude to the people for the opportunity to serve them as

President (without doubt referring to the past opportunity; [iv] he assured that he will not shirk from any future challenge that may come in the same service of the country; and [v] he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity.

b) In *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, the Supreme Court said that a courtesy resignation is just as effectual as any other resignation. There can be no implied promise of another position just because the resignation was made out of courtesy. Any express promise of another position, on the other hand, would be void, because there can be no derogation of the discretion of the appointing power and because its object is outside the commerce of man. Even assuming that such promise was true, petitioner, as a ranking member of the bureaucracy, ought to have known that such promise offers no assurance in law that the same would be complied with. The time-honored rule is that public office is a public trust and cannot be made subject of personal promises or negotiations by private persons.

2. *Need for acceptance.* Resignation must be accepted by competent authority, either expressly or impliedly (as in the appointment of a successor).

a) Mere tender of resignation, without acceptance by competent authority does not create a vacancy in public office; resignation is not complete until accepted by proper authority [*Joson v. Nario*, 187 SCRA 453]. See also *Sangguniang Bayan of San Andres, Catanduanes v. Court of Appeals*, G.R. No. 118883, January 16, 1998.

b) In the Philippines, acceptance of resignation is necessary, because Art. 238 of the Revised Penal Code penalizes any public officer who, before the acceptance of his resignation, abandons his office to the detriment of the public service.

c) If the public officer is mandated by law to hold over, the resignation, even if accepted, will not be effective until after the appointment or election of his successor.

3. *The Accepting Authority.* Acceptance of the resignation shall be made by competent authority, as provided by law.

a) Under Sec. 82, R.A. 7160, the following are the officers authorized to accept resignations of local elective officials: *President*, in case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities; *Governor*, in the case of municipal mayors and vice-mayors, city mayors and vice-mayors of component cities; *sanggunian*

concerned, in case of sanggunian members; *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.]

b) If the law is silent on who shall accept the resignation, the following rules shall apply:

i) If the public officer resigning is an appointive officer, then the tender shall be made with, and accepted by, the appointing authority;

ii) If an elective officer, then tender shall be made with, and accepted by, the officer/s authorized by law to call an election in order to fill the vacancy.

c) The President and Vice President tender their resignations with Congress; members of Congress, with their respective Houses.

4. *Effective date of resignation*: The date specified in the tender; and if no such date is specified, then resignation shall be effective when the public officer receives notice of the acceptance of his resignation, not the date of the letter or notice of acceptance [*Gamboa v. Court of Appeals (1981)*].

E. *Recall*. The termination of official relationship of an elective official for loss of confidence prior to the expiration of his term through the will of the electorate.

1. *By whom exercised*. By the registered voters of a local government unit to which the local elective official subject to such recall belongs [Sec. 69, R.A. 7160].

2. *Initiation of the recall process* [Sec. 70, R.A. 7160]. By the registered voters of the local government unit.

a) By virtue of R.A. 9244, Secs. 70 and 71 of the Local Government . Code were amended, and the Preparatory Recall Assembly has been eliminated as a mode of initiating recall of elective local government officials.³

3. *Procedure for initiating recall*. Recall of a provincial, city, municipal or barangay official shall be initiated upon petition by at least 25% of the total

number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

a) A written petition for recall duly signed before the election registrar or his representative, and in the presence of a representative of the petitioner and representative of the official sought to be recalled, and in a public place in the province, city, municipality or barangay, as the case may be, shall be filed with the Comelec through its office in the local government unit concerned. The Comelec or its duly authorized representative shall cause the publication of the petition in a public and conspicuous place for a period of not less than 10 days nor more than 20 days, for the purpose of verifying the authenticity and genuineness of the petition and the required percentage of voters.

i) In *Angobung v. Comelec*, G.R. No. 126571, March 5, 1997, the Supreme Court underscored the need for a petition signed by at least 25% of the total number of registered voters in the constituency in order to validly initiate a recall election. Thus, where the petition is signed only by the petitioner and does not even bear the names of the citizens who have allegedly lost confidence in the public official, then the petition should be dismissed.

b) Upon the lapse of the aforesaid period, the Comelec or its duly authorized representative shall announce the acceptance of candidates to the position and thereafter prepare the list of candidates which shall include the name of the official sought to be recalled.

4. *Election on Recall*. Upon the filing of a valid petition for recall with the appropriate local office of the Comelec, the Commission or its duly authorized representative shall set the date for the election on recall, which shall not be later than 30 days after the filing of the resolution or petition in the case of the barangay, city or municipal officials, and 45 days in the case of provincial officials. The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon [Sec. 71, R.A. 7160],

5. *Effectivity of Recall*. The recall of an elective local official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office [Sec. 72, R.A. No. 7160].⁶

6. *Prohibition from resignation*. The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress [Sec. 73, R.A. 7160].

7. *Limitations on Recall [Sec. 74, R.A. 7160]:*

a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

b) No recall shall take place within one year from the date of the official's assumption to office or one year immediately preceding a regular local election. In *Paras v. Comelec*, G.R. No. 123169, November 4, 1996, it was held that the Sangguniang Kabataan (SK) election is not a regular election within the contemplation of the Local Government Code as would bar the holding of a recall election. Neither will the recall election of the Mayor be barred by the barangay elections. In *Angobung v. Comelec*, *supra*., it was held that the "regular local election" referred to in Sec. 74, Local Government Code, means that the approaching local election must be one where the position of the official to be recalled is actually contested and to be filled by the electorate.

F. Removal.

1. *Constitutional guarantee of security of tenure:* No officer or employee of the civil service shall be removed or suspended except for cause provided by law [Sec. 2(3), Art. IX-B, *Constitution*],

2. *Grounds for removal or disciplinary action.* Read Sec. 36(b) of the Civil Service Law which enumerates the grounds for the suspension or dismissal of officers and employees in the Civil Service. Read also RA 6713 (*Code of Conduct and Ethical Standards of Public Officials*), particularly Sec. 5, on duties, and Sec. 7, on prohibited acts and transactions.

a) Thus, career service officers and employees who enjoy security of tenure may be removed only for any of the causes enumerated in the law, and in accordance with the procedure prescribed therein. ⁱ⁾

i) Removal not for a just cause, or non-compliance with the prescribed procedure constitutes a reversible error, and entitles the officer or employee to reinstatement with back salaries and without loss of seniority rights. Thus, in *Del Castillo v. Civil Service Commission*, G.R. No. 112513, August 21, 1997, it was held that when an official or employee is illegally dismissed and his reinstatement is later ordered by the Court, for all legal intents and purposes he is considered as not having left his office, and the silence of the decision notwithstanding, he is entitled to payment of back salaries. In *Tan v. Office of the President*, G.R. No. 110936, February 4, 1994, the Supreme Court reiterated what it said in *Cristobal v. Melchor*, 101

857, that when a government official or employee in the classified civil service has been illegally dismissed and his reinstatement is ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that is held. Indeed, in *Constantino-David v. Pangandaman-Gania*, G.R. No. 156039, August 14, 2003, the Supreme Court said that an illegally-dismissed employee who is later ordered reinstated is entitled to back wages and other monetary benefits from the time of his illegal dismissal up to his reinstatement.

ii) Demotion is tantamount to unlawful removal if no cause is shown for it, or if it is not part of any disciplinary action [*Floreza v. Ongpin*, 182 SCRA 692, cited in *De Guzman v. Civil Service Commission*, G.R. No. 101105, March 1, 1994]. The same conclusion was reached in *General Manager, PPA v. Monserate*, G.R. No. 139616, April 17, 2002, when respondent was demoted from Division Manager II to Administrative Officer.

iii) Unconsented transfer resulting in demotion in rank or salary is tantamount to removal without just cause [*Palma-Fernandez v. de la Paz*, 160 SCRA 715]. A transfer that results in promotion or demotion, advancement or reduction, or a transfer that aims to lure the employee away from his permanent position, cannot be done without the employee's consent, for that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position [*Divinagracia v. Sto. Tomas, supra*]. But an "Elementary Grades Teacher in Manila" may be assigned to any elementary school in Manila and reassigned from Grade VI to Grade IV without violating security of tenure; the choice of grade, subject areas, primary or intermediate level, school and district is pure policy and, in the absence of arbitrariness, best left to the administrators concerned [*Orcino v. Civil Service Commission* (1990)]. Thus, when one is appointed Secondary School Principal II without reference to any particular school, she may be reassigned to any station or school as the exigencies of the service demand [*Department of Education, Culture & Sports v. Court of Appeals*, 183 SCRA 555]; or where the appointment of the private respondent, Yap, was that of District Supervisor at large, she could be assigned to any station as she is not entitled to stay permanently at any specific station; thus, there is no violation of security of tenure [*Quisumbing v. Judge Gumban*, 193 SCRA 520].

iiia) But in *Chato v. Natividad*, G.R. No. 113843, June 2, 1995, the Supreme Court sustained the legality of the reassignment of Bias from Pampanga to Cagayan, after BIR Commissioner Chato had issued Revenue Administrative Order No. 5-93 redefining the jurisdiction and re-numbering the regional district offices of the BIR. The Court found that the private respondent

failed to show patent illegality in the action of the BIR Commissioner, saying that to sustain private respondent's contention that his transfer was a demotion simply because the new assignment is not to his liking would be to subordinate government projects, along with the great resources and efforts they entail, to individual preferences and opinions of civil service employees; and this would negate the principle that public office is a public trust. Moreover, the employee should have questioned the validity of his transfer by appeal to the Civil Service Commission. The lower court should have dismissed the action for failure of private respondent to exhaust administrative remedies. In any event, the movement was held to be a reassignment, made in the exigency of the service — and there was no demotion.

iv) *Some cases on grounds for disciplinary action.*

iva) Dishonesty is the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It is a serious offense which reflects in the person's character and exposes the moral decay which virtually destroys his honor, value and integrity. Under the Civil Service Law, the use of fake or spurious Civil Service eligibility is regarded as dishonesty and grave misconduct, punishable by dismissal from the service [*Civil Service Commission v. Cayabit, G.R. No. 145737, September 3, 2003*],

ivb) Conduct prejudicial to the best interests of the service is classified as a grave offense, and the penalty for a second offense is dismissal from the service [*Cabano v. Montreal, 218 SCRA 558*].

ivc) Misconduct, by uniform legal definition, is a transgression of some established and definite rule of action, more particularly, unlawful behaviour as well as gross negligence by the public officer. The word misconduct implies a wrongful intention, and not a mere error of judgment. "Time and again, we have emphasized that the Personal Data Sheet is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. Concealment of any information in the PDS, therefore, warrants a penalty for the erring official" [*Advincula v. Dicen, G.R. No. 162403, May 16, 2005*]. Indeed, in *Bautista v. Navarro, G.R. No. L-46199, June 29, 1982*, the Supreme Court held that the concealment (from the Personal Data Sheet of an official or employee) of a previous charge, albeit dismissed, constitutes a mental dishonesty amounting to misconduct.

ivd) Under the Administrative Code of 1987, a government officer or employee may be removed from the service on two grounds:

unsatisfactory conduct, and want of capacity. While the Code does not define or delineate the concepts of these two grounds, the Civil Service Law provides specific grounds for dismissing a government officer or employee from the service. Among these grounds are inefficiency and incompetence in the performance of official duties. In this case, the respondents were dismissed on the ground of poor performance. Poor performance falls within the concept of inefficiency and incompetence in the performance of official duties. But inefficiency or incompetence can only be determined after the passage of sufficient time, hence, the probationary period of six months for the respondents. Indeed, to be able to gauge whether a subordinate is inefficient or incompetent requires enough time on the part of the immediate superior within which to observe his performance. This condition was not observed in this case. As aptly stated by the Civil Service Commission, it is quite improbable ;that Mayor Jose Miranda could finally determine the performance of the respondents for only the first three months of the probationary period [*Miranda v. Carreon, G.R. No. 143540, April 11, 2003*].

v) The tenure of “political” or “non-career” members of the Foreign Service is coterminous with that of the appointing authority or subject to his pleasure; their termination is not dependent on proof of some legally recognized cause and after due notice and hearing, but lies entirely within the will of the President in the exercise of her discretion [*Astraquillo v. Manglapus, 190 SCRA 280*].

b) Officials and employees holding primarily, confidential positions continue in office for as long as confidence in them endures; the termination of their official relation can be justified on the ground of loss of confidence, but in that case, their cessation from office involves no removal but expiration of term of office [*Pacete v. Chairman, Commission on Audit, 185 SCRA 1*].

i) In *Tanjay Water District v. Quinit, G.R. No. 160502, April 27, 2007*, even as the Court acknowledged that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law, the Court said that the phrase “cause provided by law” includes loss of confidence. It is an established rule that the tenure of those holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures. Their cessation from office involves no removal but expiration of the term of office.

c) Officers and employees holding temporary or acting appointments may be removed at any time, without necessity of just cause or a valid investigation.

3. *Procedure in disciplinary cases.* Read Sec. 38, PD 807 and Sec. 48, Chapter 3, Book V, Administrative Code of 1987.

a) An administrative case against a public officer shall continue despite the withdrawal by the complainant [*Baroy v. Peralta*, 287 SCRA 1; *Dagsa-an v. Conag*, 290 SCRA 12]. Disciplinary actions against public officers do not involve purely private matters; they are impressed with public interest by virtue of the public character of the public office. The affidavit of desistance of the complainant should, therefore, be disregarded [*Sandoval v. Manalo*, 260 SCRA 611],

b) Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action upon an employee. The standard of substantial evidence is satisfied when the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position [*Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005].

4. *Jurisdiction in disciplinary cases.*

a) Heads of ministries, agencies and instrumentalities, provinces, cities and municipalities have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decision shall be final in case the penalty imposed is suspension of not more than 30 days or fine in an amount not exceeding 30 days salary. In other cases, the decision shall be initially appealed to the department head and finally to the Civil Service Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head [Sec. 37, P.D. 807].

i) However, Sec. 9, R.A. 4670 (Magna Carta for Public School Teachers) provides that the committee to hear administrative charges against public school teachers must include a representative of the teachers' organization. The appointment by the DECS Secretary of teachers to the committee does not comply with this requirement, as it is the teachers' organization which possesses the right to indicate its choice of representative in the committee, and the DECS Secretary cannot usurp such right. The inclusion of a representative of the teachers' organization in the committee is indispensable to ensure an impartial tribunal [*Fabella v. Court of Appeals* G.R. No. 110379, November 28, 1997].'

b) The Civil Service Commission has appellate jurisdiction, but a complaint may be filed directly with the Commission, and the latter may

hear and decide the case, or deputize a department or agency to conduct the investigation.

i) In *Cruz v. Civil Service Commission*, G.R. No. 144464, November 27, 2001, the Supreme Court upheld the authority of the Civil Service Commission to hear and decide a complaint filed by the CSC itself against petitioners. In this case, the acts complained of arose from cheating allegedly committed by the petitioners in the civil service examination. The examination was under the direct control and supervision of the Commission. The culprits were government employees over whom the Commission undeniably has jurisdiction.

5. *Preventive Suspension*. In *Gloria v. Court of Appeals*, G.R. No. 131012, April 21, 1999, the Supreme Court clarified that there are two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: [a] preventive suspension pending investigation, under Sec. 51, Book V, Title I, Subtitle A of the Administrative Code of 1987; and [b] preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated under Sec. 47 of the same Code.

a) The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service. This is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against the respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within a period of 90 days, the suspension will be lifted and the respondent will automatically be reinstated. If, after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.

i) In *Alonzo v. Capulong*, G.R. No. 110590, May 10, 1995, the Supreme Court reiterated the rule that the preventive suspension of a civil service officer or employee can be ordered even without a hearing, because such suspension is not a penalty but only a preliminary step to administrative investigation. Its purpose is to prevent the respondent from using his position or office to influence prospective witnesses, or to tamper with the records which may be vital in the prosecution of the case against him.

ii) In *Plaza v. Court of Appeals*, G.R. No. 138464, January 18, 2008, the Court upheld Governor Democrito Plaza's order of preventive

suspension issued against appointive local officials facing administrative charges. The law provides for the preventive suspension of appointive local officials and employees pending investigation of the charges against them. This is one of the sacrifices which holding a public office requires for the public good.

b) The authority to preventively suspend is exercised concurrently by the Ombudsman, pursuant to R.A. 6770; the same law authorizes a preventive suspension of six months [*Hagadv. Gozo-Dadole, G.R. No. 108072, December 12, 1995*],

i) Although Sec. 13, R.A. 3019, does not specifically authorize the Court of First Instance to preventively suspend a public officer facing criminal charges, the Court may validly order the preventive suspension of such officer. Since removal from office is within the power of the Court — perpetual disqualification from office being one of the penalties which may be imposed for violation of R.A. 3019 — no amount of legerdemain would deprive the Court of the power to suspend, suspension being necessarily included in the greater power of removal [*Socrates v. Sandiganbayart, G.R. No. 11625960, February 20, 1996*].

c) In *Gloria v. Court of Appeals, supra*, the Supreme Court held that the employee has no right to compensation during preventive suspension pending investigation even if he is exonerated. Invoking *Mechem, Law of Public Officers*, the Court said that in order to be entitled to payment of back salaries, it is not enough that an employee be exonerated of the charges against him. In addition, it must be shown that his suspension is unjustified. The preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty, is authorized by the Civil Service Law. It cannot, therefore, be considered “unjustified”, even if later the charges are dismissed. It is one of those sacrifices which holding a public office requires for the public good. For this reason, it is limited to 90 days.

d) In the same case, it was held that the employee is entitled to payment of back salaries for the period of preventive suspension pending appeal if eventually they are found innocent. This is so because preventive suspension pending appeal is actually punitive although it is subsequently considered illegal if respondent is exonerated and the administrative decision finding him guilty is reversed. Hence, he should be reinstated with full pay for the period of the suspension. Sec. 47 (4) states that the respondent “shall be considered as under preventive suspension during the pendency of the appeal in the event he wins”. It would be unjust to deprive him of his pay as a result of the immediate execution of the decision against him and continue to

do so even after it is shown that he is innocent of the charges for which he was suspended. Under existing jurisprudence, such award should not exceed the equivalent of five (5) years pay at the rate last received before the suspension was imposed. On the other hand, if his conviction is affirmed, the period of his suspension becomes part of the final penalty of suspension or dismissal.

i) But back salaries are not warranted when the immediate execution of the order of dismissal is justified [*De la Cruz v. Court of Appeals*,

G. R. No. 126183, March 25, 1999]. In this case, the CSC found the petitioners liable only for conduct prejudicial to the best interest of the service, not for grave misconduct, gross neglect of duty, gross violation of CS law, rules and regulations (as charged by Secretary Carino). Having been found answerable for a lesser offense, petitioners could not be considered as being fully innocent of the charges against them. Not having been exonerated, petitioners are not entitled to back salaries.

6. *Appeal.* When allowed, shall be made within 15 days from receipt of the decision, unless a petition for reconsideration is seasonably filed, which petition shall be decided within 15 days.

a) Petition for reconsideration shall be based only on the following grounds: (i) new evidence has been discovered which materially affects the decision rendered; (ii) the decision is not supported by the evidence on record; or (iii) errors of law or irregularities have been committed which are prejudicial to the interest of the respondent.

b) Pursuant to Supreme Court Revised Circular No. 1-91, as amended by Revised Administrative Circular No. 1-95 which took effect on June 1, 1995, final resolutions of the Civil Service Commission shall be appealable by certiorari under Rule 43 to the Court of Appeals within 15 days from receipt of a copy thereof. From the decision of the Court of Appeals, the party adversely affected thereby shall file a petition for review on certiorari with the Supreme Court under Rule 45 of the Rules of Court.

c) In *Civil Service Commission v. Dacoycoy*, G.R. No. 135805, April 29, 1999, reiterated in *Civil Service Commission v. Jocelyn S. Gentallan*, G.R. No. 152833, May 9, 2005, the Supreme Court expressly abandoned and overruled the rule that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office" and not included are "cases where the penalty imposed is suspension for not more than 30 days or fine in an amount not exceeding 30 days

salary" or "when the respondent is exonerated of the charges, there is no occasion for appeal". In this case, the Supreme Court sustained the right of the Civil Service Commission to appeal to the Supreme Court the decision of the Court of Appeals exonerating the respondent and reversing the Civil Service Commission's decision which found Dacoycoy guilty of nepotism and ordered his dismissal from the service. This decision overrules prior decisions holding that the Civil Service Law does not contemplate a review of decisions exonerating officers or employees from administrative charges enunciated in *Paredes v. CSC*, *Mendez v. CSC*, *Magpale v. CSC*, *Navarro v. CSC*, and more recently, *Del Castillo v. Civil Service Commission*, 241 SCRA 317.

i) In *Pastor v. City of Pasig*, G.R. No. 146873, May 9, 2002, this ruling was applied when the City of Pasig appealed (to the Court of Appeals) the decision of the Civil Service Commission. The City of Pasig, in this case, was a "party adversely affected" by the CSC decision.

7. *Summary Dismissal*. While Sec. 40 of the Civil Service Law still provides for cases of summary removal (when the charge is serious and evidence of guilt is strong; when respondent is a recidivist or has been repeatedly charged, and there is reasonable ground to believe that he is guilty of the present charge; and when respondent is notoriously undesirable), and these same provisions are reproduced *in toto* in the Administrative Code of 1987 (Executive Order No. 292), which took effect in 1989, nonetheless, these provisions on summary dismissal have already been repealed by Republic Act No. 6654, approved on May 20, 1988 and published in the Official Gazette on May 30, 1988. See *Abalos v. Civil Service Commission*, 196 SCRA 81; *Rosete v. Court of Appeals*, G.R. No. 107841, November 14, 1996.

8. *Removal of Administrative Penalties or Disabilities*. In meritorious cases and upon recommendation of the Civil Service Commission, the President may commute or remove administrative penalties or disabilities imposed upon officers or employees in disciplinary cases, subject to such terms and conditions as he may impose in the interest of the service.

a) In *Vicente Garcia v. Chairman, Commission on Audit*, G.R. No. L-75025, September 14, 1993, it was held that when a person is granted a pardon because he did not truly commit the offense, the pardon relieves him from all punitive consequences of his criminal act, thereby restoring him to his clean name, good reputation and unstained character prior to his finding of guilt. The bestowal of executive clemency in effect completely obliterated the adverse effects of the administrative decision which found him guilty of dishonesty and ordered his separation from the service. This can be inferred from the executive clemency itself exculpating petitioner from the administrative

charge and thereby directing his reinstatement, which is rendered automatic by the grant of the pardon. This signifies that the petitioner need no longer apply for reinstatement; he is restored to his office *ipso facto* upon the issuance of the clemency, and he is entitled to back wages.

G. Abandonment. The voluntary relinquishment of an office by the holder, with the intention of terminating his possession and control thereof.

1. Abandonment of office is a species of resignation; while resignation in general is a formal relinquishment, abandonment is a voluntary relinquishment through non-user. Non-user refers to a neglect to use a privilege or a right or to exercise an easement or an office [*Municipality of San Andres, Catanduanes v. Court of Appeals*, G.R. No. 118883, January 16, 1998].

2. A person holding a public office may abandon such office by nonuser or by acquiescence. However, non-performance of the duties of an office does not constitute abandonment where such non-performance results from temporary disability or from involuntary failure to perform. Abandonment may also result from acquiescence by the officer in his wrongful removal or discharge. Where, while desiring and intending to hold the office, and with no willful desire or intention to abandon it, the public officer vacates it in deference to the requirements of a statute which is afterwards declared unconstitutional, such a surrender will not be deemed abandonment [*Canonizado v. Aguirre*, G.R. No. 133132, February 15, 2001].

a) Mere delay in qualifying for the office is not abandonment. But under Sec. 11, BP 881, failure to assume elective office within six months from proclamation, without just or valid cause, shall have the effect of vacating the office.

b) When, after liberation, a pre-war Justice of the Peace refused to return to his office when required by the proper authorities, because the salary of a justice of the peace is not sufficient to sustain his family, he was deemed to have abandoned his office [*Floresca v. Quetulio*, 82 Phil 128].³

3. Under Civil Service Rules, an officer or employee shall be automatically separated from the service if he fails to return to the service after the expiration of one-year leave of absence without pay. In *Quezon v. Borromeo*, 149 SCRA 205, it was held that there is nothing that the government can do to compel an unwilling employee to return to government service. Notice having been given to his last known address, the dropping from the rolls does not constitute denial of due process. After all, an opportunity is given to the employee to contest the legality of his being dropped from the rolls.

of the Philippines and Alfredo de Torres v. Civil Service Commission, *supra.*, where it was held that the Civil Service Commission may not, on its own, terminate employment or drop an employee from the rolls, where the employer itself has opted to retain and even promote the employee.

4. In *Re: Absence Without Official Leave of Darlene A. Jacoba*, A.M. No. 98-8-246-RTC, February 15, 1999, the Supreme Court upheld the validity of Sec. 35, Rule XVI of the Omnibus Rules of the Civil Service, which provides that officers and employees who are absent for at least 30 days without approved leave are considered on Absence Without Leave (AWOL) and shall be dropped from the service after due notice.

a) While the granting or approval of leaves of absence depends upon the needs of the service, and is therefore discretionary upon the head of the department or agency, this discretion must be exercised properly. In *Philippine Coconut Authority v. Garrido*, G.R. No. 135003, January 21, 2002, the Supreme Court noted that respondent's application for a leave of absence was disapproved only on September 15, 1993, almost two months from the time he filed the same. This unexplained inaction gave the respondent the impression that there was no impediment to his leave application. Respondent cannot, therefore, be considered on AWOL for more than 30 days.⁵

5. In *Adiong v. Court of Appeals*, G.R. No. 136480, December 4, 2001, the Supreme Court said that the failure to make a courtesy call to one's superior is not an offense, much less a ground to terminate a person's employment. The failure of the respondent Nuske to submit her appointment papers is not a cause for her outright dismissal. And it is significant that Nuske informed Mayor Adiong that she did not resign and that the termination of her services was against Civil Service Rules. She requested that she be reinstated to her lawful position and her back salaries paid. This explains why, despite her being physically absent from the office premises, she cannot be deemed to have abandoned her office because all the while, she had the intention to return to work. [However, note that according to jurisprudence, a civil service employee illegally terminated from the service is entitled to back salaries limited only to a maximum of five years salary, not to full back salaries from her illegal termination up to reinstatement.]

H. Acceptance of an Incompatible Office.

1. *Test of Incompatibility.* By the nature and relation of the two offices to each other, they ought not to be held by one person from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one toward the incumbent of the

a) Distinguish incompatible from forbidden office. See: Sec. 12, Art. VI, Constitution.

2. Acceptance of incompatible office *ipso facto* vacates the other. There is no necessity for any proceeding to declare or complete the vacation of the first office. See *Adaza v. Pacana*, 135 SCRA 431. However, in *Canonizado v. Aguirre, supra.*, incompatibility of duties rule never had a chance to come into play, because the petitioner never occupied the two positions, that of NAPOLCOM Commissioner and that of Inspector General of the IAS, even as petitioner accepted the latter position, but continued to pursue legal remedies to recover the first from which he had been unlawfully ousted by the law itself (Sec. 8, R.A. 8551) which was later declared unconstitutional.

a) Exception: Where the public officer is authorized by law to accept the other office, e.g., the Secretary of Justice who is, by express provision of the Constitution, a member of the Judicial and Bar Council. See also *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, where the Supreme Court declared Executive Order 284 unconstitutional.

I. **Abolition of Office.**

1. *Power of Legislature to abolish an office.* Except when restrained by the Constitution, Congress has the right to abolish an office, even during the term for which an existing incumbent may have been elected.

a) Constitutional offices cannot be abolished by Congress.

b) No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its members [*Sec. 2, Art. VIII, Constitution*].

c) Valid abolition of office does not constitute removal of the incumbent.

d) It is within the legal competence of the city council to create, consolidate and reorganize city offices and positions wholly supported by local funds [*Mama, Jr. v. Court of Appeals*, 196 SCRA 489]. In *Javier v. Court of Appeals*, G.R. No. L-49065 (1994), the Supreme Court upheld the authority of the Provincial Board of Antique in abolishing the Office of the Provincial Engineer; under R.A. 5185 (Local Autonomy Law), provincial governments are empowered to create, among other positions, the office of the provincial engineer, and while the law did not expressly vest the power to abolish, it can be deemed embraced by implication from the power to create it.

2. *Abolition of office; requisites:* The abolition must be made in good faith, with the clear intent to do away with the office, not for personal or political reasons, and cannot be implemented in a manner contrary to law. See *Mendoza v. Quisumbing*, 186 SCRA 108; *De la Liana v. Alba*, 112 SCRA 294; *Cruz v. Primicias*, 23 SCRA 998.

a) In *Ginson v. Municipality of Murcia*, 158 SCRA 1, the abolition of the position of Municipal Dentist on grounds of fiscal restraint and economy was held invalid, because after the abolition, new offices were created and salary increases granted to municipal officers and employees. In *Rama v. Court of Appeals*, 148 SCRA 496, the abolition of the various items of employees in the Provincial Engineer's Office of the Cebu was held to be politically-motivated, and, thus, invalid.

3. *Reorganization of Government Offices.*

a) Constitutional recognition of authority to reorganize: See: Sec. 16, Art. XVIII, Philippine Constitution. There is no dispute that pursuant to the Provisional (Freedom) Constitution and the various executive orders issued by the President when she was the sole law-making authority, the different departments of government were authorized to carry on reorganization programs [*Dario v. Mison*, 176 SCRA 84]. But the nature and extent of the power to reorganize were circumscribed by the source of the power itself. It was never intended that department and agency heads would be vested with untrammelled and automatic authority to dismiss the millions of government workers on the stroke of a pen and with the same sweeping power determine under their sole discretion who would be appointed or reappointed to the vacant positions. The promotion of simplicity, economy and efficiency is the usual standard which enables a delegation of powers in reorganization statutes to pass the test of validity. Because the heads of departments and agencies concerned have chosen to rely on their own concepts of unlimited discretion and progressive ideas on reorganization instead of showing that they have faithfully complied with the clear letter and spirit of the two Constitutions and the statutes governing reorganization, the reorganizations (in these consolidated petitions) are hereby set aside [*Mendoza v. Quisumbing*, *supra*.].

b) There is no violation of due process even if no hearing was conducted in the matter of reorganization of the DBP, as long as the employee was given a chance to present evidence [*Domingo v. Development Bank of the Philippines*, 207 SCRA 766]. The Court of Appeals and the Intermediate Appellate Court existing prior to EO 33 were phased out as part of the legal system abolished by the revolution. The Court of Appeals established under EO 33 is an entirely new court; hence reference to preference in rank contained

in BP 129 refers to prospective situations, not retroactive ones. As head of the revolutionary government, President Aquino can disregard any seniority ranking in the Court of Appeals [*Letter of Associate Justice Puno*, 210 SCRA 589]. In *Sison v. Civil Service Commission*, 208 SCRA 859, the removal of petitioner from his position and his subsequent demotion from Municipal Food and Agricultural Officer to Production Technician violated security of tenure. The reorganization of the Department of Agriculture under EO 116 was set aside for failure to observe the guidelines in EO 33 for removal of employees, namely: a) existence of a case for summary dismissal pursuant to Sec. 40, Civil Service Law; b) probable cause for violation of R.A. 3019; c) gross incompetence or inefficiency in the discharge of functions; d) misuse of public office for partisan political activities; and e) analogous grounds showing that the incumbent is unfit to remain in the service. The same ruling was applied in *Abaya v. Civil Service Commission*, G.R. No. 98027, October 4, 1994. See also *Pari-an v. Civil Service Commission*, 202 SCRA 772.

c) In *Lopez v. Civil Service Commission*, 194 SCRA 269, the Supreme Court said that Sec. 6 of R. A. 6656 on government reorganization merely provides that the selection or placement should be done through the creation of a Placement Committee the members of which are the representatives of the head of the agency as well as representatives of the employees. The committee's work is recommendatory and does not fix a stringent formula regarding the mode of choosing from among the candidates.

d) Reorganization in a bureau or office performing constituent functions (like the Bureau of Customs), or in a government-owned or-controlled corporation (like the PNB), must meet a common test, the test of good faith [*Romuaidez-Yap v. Civil Service Commission*, G.R. No. 104226, August 12, 1993]. Good faith, as a component of reorganization under a constitutional regime, is judged from the facts of each case [*Dario v. Mison*, 176 SCRA 84].

e) In *Buklod ng Kawaning EIIB v. Executive Secretary*, G.R. Nos. 142891-02, July 10, 2001, the Supreme Court held that PD 1772, which amended PD 1416, grants the President the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The deactivation of EIIB and the creation of Task Force Aduana were well within this authority. The executive orders were issued in good faith: first, there is no employment of new personnel to man the Task Force; second, the thrust of the EO is to encourage the utilization of personnel, facilities and resources of already existing departments, agencies, bureaus, etc., third, it appears that the creation of the Task Force was intended to lessen EIIB's expense.

J. Prescription of the right to office.

1. The Rules of Court provide that a petition for reinstatement (after illegal ouster or dismissal), or the recovery of the public office, must be instituted within one (1) year from the date the petitioner is unlawfully ousted from his office.

a) Reason for the rule: Title to public office should not be subjected to continued uncertainty; and the people's interest requires that such right should be determined as speedily as possible [*Tumulak v. Egay*, 82 Phil 828].

b) Filing of an action for administrative remedy does not suspend the period for filing the appropriate judicial proceeding [quo warranto] [*Galano v. Roxas*, 67 SCRA 8]. The one year period runs even during the pendency of a motion for reconsideration [*Morales v. Patriarca*, 13 SCRA 766].

c) Unless there are strong, compelling and special circumstances to warrant a different course, courts will not entertain a petition for reinstatement filed beyond the one-year period. But in *Cristobal v. Melchor*, 78 SCRA 175, the Supreme Court allowed the suit filed in 1971, nine years after the petitioner was dismissed from office, on grounds of equity.

K. Impeachment. See Chapter on ACCOUNTABILITY OF PUBLIC OFFICERS, Constitutional Law, supra.

L. Death. The death of the incumbent of an office necessarily renders the office vacant.

M. Failure to assume office. Sec. 11, BP 881 provides: "The office of any official elected who fails or refuses to take his oath of office within six months from his proclamation shall be considered vacant, unless said failure is for a cause or causes beyond his control."

N. Conviction of a crime.

1. When the penalty imposed, upon conviction, carries with it the accessory penalty of disqualification, conviction by final judgment automatically terminates official relationship.

a) While a plenary pardon extinguishes the accessory penalty of disqualification, it will not restore the public office to the officer convicted. He must be given a new appointment to the position [*Monsanto v. Factoran*, 170 SCRA 190]. But in *Sabello v. Department of Education, Culture and Sports*,

180 SCRA 623, for reasons of equity, the Supreme Court held that the former elementary school principal should not be re-appointed to a lower position than that which he formerly occupied.

' O. Filing of certificate of candidacy.

1. Sec. 66, B.P.881 provides: "Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy."

a) In *PNOC Energy Development Corporations. NLRC, G.R. No. 100947, May 31, 1993*, it was held that this section applies even to employees of government-owned or -controlled corporations without an original charter.

ELECTION LAWS

I. GENERAL PRINCIPLES

A. Definitions.

1. *Suffrage*: the right to vote in the election of officers chosen by the people and in the determination of questions submitted to the people. Includes within its scope: election, plebiscite, initiative and referendum.

2. *Election*: the means by which the people choose their officials for a definite and fixed period and to whom they entrust for the time being the exercise of the powers of government. Kinds:

a) *Regular*: one provided by law for the election of officers either nationwide or in certain subdivisions thereof, after the expiration of the full term of the former officers.

b) *Special*: one held to fill a vacancy in office before the expiration of the full term for which the incumbent was elected.

B. Theories on Suffrage.

1. *Natural right theory*: Suffrage is a natural and inherent right of every citizen who is not disqualified by reason of his own reprehensible conduct or unfitness.

2. *Social expediency*: Suffrage is a public office or function conferred upon the citizen for reasons of social expediency; conferred upon those who are fit and capable of discharging it.

3. *Tribal theory*: It is a necessary attribute of membership in the State.

4. *Feudal theory*: It is an adjunct of a particular status, generally tenurial in character, i.e., a vested privilege usually accompanying ownership of land.

5. *Ethical theory*: It is a necessary and essential means for the development of society.

C. Theory prevailing in the Philippines: *Suffrage* is both a privilege and an obligation.

D. System of election adopted in the Philippines: Since 1901, the Australian system, first conceived by Francis S. Dutton, a member of the Legislature of South Australia. The distinguishing feature of the system is strict secrecy in balloting.

E. Constitutional mandate on Congress [Sec. 2, Art. V, Constitution]:

1. To provide a system for securing the secrecy and sanctity of the ballot, and for absentee voting by qualified Filipinos abroad.

a) Sec. 12, R. A. 7166 provides for absentee voting, but is applicable only to the elections for the President, Vice President and Senators, and limited to members of the Armed Forces of the Philippines and the Philippine National Police and other government officers and employees who are duly registered voters and who, on election day, may temporarily be assigned in connection with the performance of election duties to places where they are not registered voters.

b) R.A. 9189 (The Overseas Absentee Voting Act of 2003) addressed the need for overseas Filipinos to be able to vote in Philippine elections. See following Chapter on VOTERS: QUALIFICATION AND REGISTRATION, for more detailed discussion.

2. To design a procedure for the disabled and the illiterate to vote without the assistance of other persons.

F. Election period. Unless otherwise fixed by the Comelec in special cases, the election period shall commence 90 days before the day of the election and shall end 30 days thereafter [*Sec. 9, Art. IX-C, Constitution*].

II. COMMISSION ON ELECTIONS

[See CHAPTER XI, CONSTITUTIONAL LAW]

III. VOTERS: QUALIFICATION AND REGISTRATION

A. Qualifications for suffrage: "Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage [Sec. 1, Art. V, Constitution].

1. Any person who transfers residence to another city, municipality or country solely by reason of his occupation, profession or employment in private or public service, education, etc., shall not be deemed to have lost his original residence [Sec. 117, B.P 881],

2. In *Makalintal v. Comelec*, G.R. No. 157013, July 3, 2003, challenged as unconstitutional was Sec. 5(d) of R.A. 9189 (The Overseas Absentee Voting Act of 2003), which provides that among those disqualified to vote is an immigrant or a permanent resident (of another country) who is recognized as such in the host country, *unless he/she executes an affidavit declaring the he/ she shall resume actual, physical, permanent residence in the Philippines not later than three years from approval of his/her registration under the said Act, and that he/she had not applied for citizenship in another country.*.. On this challenge, the Supreme Court said that inasmuch as the essence of R.A. 9189 is to enfranchise overseas qualified Filipinos, the Court should take a holistic view of the pertinent provisions of both the Constitution and R.A. 9189. The law was enacted in obeisance to the mandate of the first paragraph of Sec. 2, Art. V of the Constitution, that Congress shall provide a system for voting by qualified Filipinos abroad. It must be stressed that Sec. 2 does not provide for the parameters of the exercise of legislative authority in enacting said law. Hence, in the absence of restrictions, Congress is presumed to have duly exercised its function as defined in Art. VI of the Constitution.

a) In this case, the Supreme Court continued by saying that contrary to the claim of petitioner, the execution of the affidavit itself is not the enabling or enfranchising act. The affidavit required is not only proof of the intention of the immigrant or permanent resident to go back and resume residency in the Philippines, but more significantly, it serves as an explicit expression that

he had not in fact abandoned his domicile of origin. It must be emphasized that Sec. 5(d) does not only require an affidavit or a promise to "resume actual physical permanent residence in the Philippines not later than three years from the approval of his/her registration", the Filipino abroad must also declare that they have not applied for citizenship in another country. Thus, they must return to the Philippines otherwise, their failure to return "shall be cause for the removal" of their names "from the National Registry of absentee voters and his/her permanent disqualification to vote in absentia".

B. Disqualifications [Sec. 118, B.P. 881]:

1. Any person sentenced by final judgment to suffer imprisonment for not less than one year (unless granted a plenary pardon or an amnesty); but right is reacquired upon the expiration of 5 years after service of sentence.
2. Any person adjudged by final judgment of having committed any crime involving disloyalty to the government or any crime against national security (unless restored to full civil and political rights in accordance with law); but right is reacquired upon the expiration of 5 years after service of sentence.
3. Insane or incompetent persons as declared by competent authority.

C. Registration of voters. It shall be the duty of every citizen to register and cast his vote [Sec. 4, B.P. 881]. In order that a qualified elector may vote in any election, plebiscite or referendum, he must be registered in the Permanent List of Voters for the city or municipality in which he resides [Sec. 115, BP 881],

1. Registration does not confer the right to vote; it is but a condition precedent to the exercise of the right. Registration is a regulation, not a qualification [*Yra v. Abano, 52 Phil 380*],

2. *General Registration of voters.* Immediately after the barangay elections in 1997, the existing certified list of voters shall cease to be effective and operative. For purposes of the May 1998 elections and all elections, plebiscites, referenda, initiatives and recalls subsequent thereto, the Comelec shall undertake a general registration of voters [Sec. 7, R.A. 8189 (*The Voters Registration Act of 1996*)].³

3. *System of Continuing Registration.* The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours. No registration shall, however, be conducted during the period starting 120 days before a regular election and 90 days before a special election [Sec. 8, R.A. 8189].

a) InAkbayan Youth v. Comelec, G.R. No. 147066, March 26, 2001, the Supreme Court upheld the action of the Comelec denying petitioners' request for two (2) additional registration days in order to enfranchise more than 4 million youth between the ages 18-21 who failed to register on or before December 27, 2000. The law was simply followed by the Comelec, and it is an accepted doctrine in administrative law that the determination of administrative agencies as to the operation, implementation and application of a law is accorded great weight, considering that these specialized government bodies are, by their nature and functions, in the best position to know what they can possibly do or not do under prevailing circumstances.

4. *Disqualification.* The same grounds as the disqualifications for suffrage.

5. *Illiterate or disabled voters.* Any illiterate person may register with the assistance of the Election Officer or any member of an accredited citizen's arms. The application for registration of a physically disabled person may be prepared by any relative within the fourth civil degree of consanguinity or affinity or by the Election Officer or any member of an accredited citizen's arm using the data supplied by the applicant [Sec. 14, R.A. 8189],

6. *Election Registration Board* [Sec. 15, R.A. 8189]. There shall be in each city and municipality as many Election Registration Boards as there are election officers therein. The Board shall be composed of the Election Officer as chairman, and as members, the public school official most senior in rank and the local civil registrar, or in his absence, the city or municipal treasurer. No member of the Board shall be related to each other or to any incumbent city or municipal elective official within the fourth civil degree of consanguinity or affinity. Every registered party and such organizations as may be authorized by the Commission shall be entitled to a watcher in every registration board.

7. *Challenges to right to register* [Sec. 18, R.A. 8189]. Any voter, candidate or representative of a registered political party may challenge in writing any application for registration, stating the grounds therefor. The challenge shall be under oath and attached to the application, together with the proof of notice of hearing to the challenger and the applicant. Oppositions to contest a registrant's application for inclusion in the voters' list must, in all cases, be filed not later than the second Monday of the month in which the same is scheduled to be heard or processed by the Election Registration Board. The hearing on the challenge shall be heard on the third Monday of the month and the decision shall be rendered before the end of the month.⁸

8. *Deactivation of Registration* [Sec. 27, R.A. 8189]. The Board shall deactivate the registration and remove the registration records of the

persons from the corresponding precinct book of voters and place the same, properly marked and dated in indelible ink, in the inactive file after entering the cause or causes of deactivation: [a] Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year, such disability not having been removed by plenary pardon or amnesty; Provided, however, that any person disqualified to vote (because of this) shall automatically reacquire the right to vote upon expiration of five years after service of sentence as certified by the clerks of courts; [b] any person who has been adjudged by final judgment by a competent court or tribunal of having caused/committed any crime involving disloyalty to the duly constituted government, such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law, Provided that he shall regain his right to vote automatically upon expiration of five years from service of sentence; [c] any person declared by competent authority to be insane or incompetent unless such disqualification has been subsequently removed by a declaration of a proper authority that such person is no longer insane or incompetent; [d] any person who did not vote in the two successive preceding regular elections as shown by their voting records (for this purpose, regular elections do not include the Sangguniang Kabataan elections); [e] any person whose registration has been ordered excluded by the court; and [f] any person who has lost his Filipino citizenship.

9. *Reactivation of Registration [Sec. 28, R.A. 8189]*. Any voter whose registration has been deactivated may file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating that the grounds for the deactivation no longer exist any time but not later than 120 days before a regular election and 90 days before a special election. The Election Officer shall submit such application to the Election Registration Board for appropriate action.

10. *Preparation and Posting of the Certified List of Voters [Sec. 30, R.A. 8189]*. The Board shall prepare and post a certified list of voters 90 days before a regular election and 60 days before a special election and furnish copies thereof to the provincial, regional and national central files. Copies of the certified list, along with a list of deactivated voters categorized by precinct per barangay shall also be posted in the office of the Election Officer and in the bulletin board of each city/municipal hall.

D. Inclusion and Exclusion proceedings.

1. *Common rules governing judicial proceedings in the matter of inclusion, exclusion and correction of names of voters.*

a) Petition for inclusion, exclusion or correction of names of voters shall be filed during office hours.

b) Notice of the place, date and time of the hearing of the petition shall be served upon the members of the Board and the challenged voter upon filing of the petition.

c) A petition shall refer only to one precinct and shall implead the Board as respondents.

d) No costs shall be assessed against any party in these proceedings. However, if the court finds that the application has been filed solely to harass the adverse party and cause him to incur expenses, it shall order the culpable party to pay the costs and incidental expenses.

e) Any voter, candidate or political party affected by the proceedings may intervene and present his evidence.

f) The decision shall be based on the evidence presented and in no case rendered upon a stipulation of facts. If the question is whether or not the voter is real or fictitious, his non-appearance on the day set for hearing shall be *prima facie* evidence that the challenged voter is fictitious.

g) The petition shall be heard and decided within 10 days from the date of its filing. Cases appealed to the RTC shall be decided within 10 days from receipt of the appeal. In all cases, the court shall decide these petitions not later than 15 days before the election and the decision shall become final and executory.

2. *Jurisdiction in inclusion and exclusion cases [Sec. 33, R.A. 8189]*, The Municipal and Metropolitan Trial Courts shall have original and exclusive jurisdiction over all cases of inclusion and exclusion of voters in their respective cities and municipalities. Decisions of the Municipal or Metropolitan Trial Courts may be appealed by the aggrieved party to the Regional Trial Court within five days from receipt of notice thereof. Otherwise, said decision shall become final and executory. The RfC shall decide the appeal within 10 days from the time it is received and the decision shall immediately become final and executory. No motion for reconsideration shall be entertained.

3. *Petition for Inclusion [Sec. 34, R.A. 8189]*. Any person whose application for registration has been disapproved by the Board or whose name has been stricken out from the list may file with the court a petition to include his name in the permanent list of voters in his precinct at any time except 105 days prior to a regular election or 75 days prior to a special election. It shall be supported by a certificate of disapproval or his application and proof of service of notice of his petition upon the Board. The petition shall be decided within 15 days after its filing.

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4. *Petition for Exclusion [Sec. 35, R.A. 8189]*, Any registered voter, representative of a political party or the Election Officer, may file with the

a sworn petition for the exclusion of a voter from the permanent list of voters giving the name, address and the precinct of the challenged voter at any time except 100 days prior to a regular election or 65 days prior to a special election. The petition shall be accompanied by proof of notice to the Board and to the challenged voter, and shall be decided within 10 days from its filing.

E. Annulment of Book of Voters [Sec. 39, R.A. 8189]. The Commission shall, upon verified petition of any voter or election officer or duly registered political party, and after notice and hearing, annul any book of voters that is not prepared in accordance with the provisions of this law, or was prepared through fraud, bribery, forgery, impersonation, intimidation, force or any similar irregularity, or which contains data that are statistically improbable. No order, ruling or decision annulling a book of voters shall be executed within 90 days before an election.

1. However, the annulment of the list of voters shall not constitute a ground for a pre-proclamation contest [*Ututalum v. Comelec*, 181 SCRA 335].

IV. POLITICAL PARTIES

A. *Party System.* A free and open party system shall be allowed to evolve according to the free choice of the people [Sec. 2(5), Art. IX-C, Constitution],

1. 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 the Constitution [Sec. 7, Art. IX-C],

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

2. Political parties registered under the party-list system shall be entitled to appoint poll watchers in accordance with law [Sec. 8, Art. IX-C],

3. Party-list representatives shall constitute 20% of the total number of representatives in the House of Representatives [Sec. 5(2), Art. VI].

B. *Political Party.*

1. *Definitions* [See R.A. 7941 (*The Party-List System Act*)].

a) A *party* means either a political party or a sectoral party or a coalition of parties.

b) *Apolitical party* refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates certain of its leaders and members as candidates for public office. It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

c) A *sectoral party* refers to an organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals, whose principal advocacy pertains to the special interest and concerns of their sector.

d) A *sectoral organization* refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

e) A *coalition* refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

2. *Registration.* In order to acquire juridical personality as a political party, to entitle it to the benefits and privileges granted under the Constitution and the laws, and in order to participate in the party-lists system, the group must register with the Commission on Elections by filing with the Comelec not later than 90 days before the election a verified petition stating its desire to participate in the party-list system as a national, regional, sectoral party or organization or a coalition of such parties or organizations.

a) Groups which cannot be registered as political parties: [i] religious denominations or sects; [ii] those who seek to achieve their goals through violence or unlawful means; [iii] those who refuse to uphold and adhere to the Constitution; and [iv] those supported by foreign governments [Sec. 2(5), Art IX-C].

b). Grounds for cancellation of registration: Accepting financial contributions from foreign governments or their agencies [Sec. 2(5), Art. IX-C], Under R.A. 7941, the Comelec may, *motu proprio* 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: [i] it is a religious sect or denomination, organization or association organized for religious purposes; [ii] it advocates violence or unlawful means to seek its goal; [iii] it is a foreign party or organization; [iv] 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; [v] it violates or fails to comply with laws, rules or regulations relating to elections; [vi] it declares untruthful statements in its petition; [vii] it has ceased to exist for at least one year; and [viii] 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.

3. *Nomination of party-list representatives, etc..* Read R.A. 7941 See Chapter VIII, CONSTITUTIONAL LAW.⁴

4. *Authority of the Commission on Elections.* Flowing from its constitutional power to enforce and administer all laws and regulations relative to the conduct of the election and its power to register and regulate political parties, the Commission on Elections may resolve matters

ascertainment of the identity of the political party and its legitimate officers [*Laban ng Demokratikong Pilipino v. Comelec*, G.R. No. 161265, February 24, 2004].

V. CANDIDATES; CERTIFICATES OF

A. *Qualifications.*

1. Qualifications prescribed by law are continuing requirements and must be possessed for the duration of the officer's active tenure. Once any of the required qualifications is lost, his title to the office may be seasonably challenged. See *Frivaldo v. Comelec*, 174 SCRA 245; *Labo v. Comelec*, 176 SCRA 1].

2. *When should the qualification/s be possessed.* The Local Government Code does not specify any particular date when the candidate must possess 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 on June 30, 1995, when his application for repatriation was granted by the Special Committee on Naturalization created under PD 825, he was, therefore, qualified to be proclaimed and to assume office. Sec. 39 of the Local Government Code speaks of qualifications of elective officials, not of candidates. Furthermore, repatriation retroacts to the date of the filing of his application (for repatriation) on August 17, 1994 [*Frivaldo v. Comelec*, 257 SCRA 727].

B. *Disqualifications.*

1. *Under the Omnibus Election Code [B.P. 881]:*

- a) Declared as incompetent or insane by competent authority.
- b) Sentenced by final judgment for subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than 18 months imprisonment.
- c) Sentenced by final judgment for a crime involving moral turpitude.

i) In *Villaber v. Comelec*, G.R. No. 148326, November 15, 2001, it was held that violation of Batas Pambansa No. 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 the payment of the check in full upon presentment. A conviction thereof shows that the accused is guilty of deceit, and certainly relates to and affects the good moral character of the person.

ii) 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]. This is modified by *Moreno v. Comelec, infra*.

d) Any person who is a permanent resident of or an immigrant to a foreign country (unless he has waived his status as such) [Sec. 68, B.P. 881]. See *Caasi v. Comelec*, 191 SCRA 229, where the Supreme Court said that a "green card" is ample proof that the holder thereof is a permanent resident of, or an immigrant to, the United States.

2. *Under the Local Government Code [Sec. 40, R.A. 7160]*: Applicable to candidates for local elective office only:

a) Those sentenced by final judgment for an offense punishable by one year or more of imprisonment, within two years after serving sentence.

i) Even if the candidate is under probation, the disqualification still subsists, because the effect of the probation is only to suspend the implementation of the sentence [*De la Torre v. Comelec, supra*]. This is modified by *Moreno v. Comelec*, G.R. No. 168550, August 10, 2006, where the Supreme Court, citing *Bacaylon v. Mutia*, said that probation is not a sentence but is rather, in effect, a suspension of the imposition of the sentence. The grant of probation to petitioner suspended the imposition of the principal penalty of imprisonment, as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. Thus, during the period of probation, the probationer is not disqualified from running for a public office because the accessory penalty of disqualification from public office is put on hold for the duration of the probation. Furthermore, in the case of Moreno, the trial court had already issued an order finally discharging him, and under Sec. 16 of the Probation Law, the final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction, and to fully discharge his liability for any fine imposed as to the offense for which the probation was granted.

b) Those removed from office as a result of an administrative case.

i) In *Grego v. Comelec*, G.R. No. 125955, June 19, 1997, it was held that an elective local official who was removed from office as a result of an administrative case prior to January 1, 1992 (the date of effectiveness of the Local Government Code), is not disqualified from running for an elective local public office, because Sec. 40 of the Local Government Code cannot be given retroactive effect.

ii) In *Reyes v. Comelec*, 254 SCRA 514, the Supreme Court 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, inasmuch as it was shown that he merely refused to accept delivery of the copy of the decision.

c) Those convicted by final judgment for violating the oath of allegiance to the Republic of the Philippines.

d) Those with dual citizenship.

i) In *Mercado v. Manzano*, 307 SCRA 630, reiterated in *Valles v. Comelec*, G.R. No. 137000, August 09, 2000, the Supreme Court clarified the “dual citizenship” disqualification and reconciled the same with Sec. 5, Art. IV of the Constitution on “dual allegiance”. Recognizing situations 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.

ii) Furthermore, for candidates with dual citizenship, it is enough that they elect Philippine citizenship upon the filing of their certificate of candidacy to terminate their status as persons with dual citizenship. The filing of a certificate of candidacy suffices to renounce foreign citizenship, effectively removing any disqualification as dual citizen. This is so, because in the certificate of candidacy, one declares that he is a Filipino citizen, and that he will support and defend the Constitution and will maintain true faith and allegiance to the same. Such declaration under oath operates as an effective renunciation of foreign citizenship [*Mercado v. Manzano*, *supra*.].

iii) However, in the case of a former Filipino who lost Philippine citizenship and thereafter reacquires it by taking the oath of allegiance as required in R.A. 9225, he must personally swear to an oath renouncing all foreign citizenship at the time of the filing of the certificate of candidacy. The mere filing of the certificate of candidacy is not sufficient, because Sec. 5 (2) of R.A. 9225 categorically requires the individual to state in clear and unequivocal terms that he is renouncing all foreign citizenship, failing which he is disqualified from running for an elective office [*Lopez v. Comelec*, G.R. No. 182701, July 23, 2008, reiterated in *Jacot v. Del and Comelec*, G.R. No. 179848, November 27, 2008].

e) Fugitives from justice in criminal and non-political case here and abroad. A “fugitive from justice”, as defined by the Supreme Court in *Marquez v. Comelec*, 243 SCRA 538, “includes not only those who flee after conviction to avoid punishment, but likewise those who, after being charged, flee to avoid prosecution”. Rodriguez cannot be considered a “fugitive from justice”, because his arrival in the Philippines from the U.S. preceded the filing of the felony complaint in the Los Angeles Court and the issuance of the arrest warrant by the same foreign court, by almost five months [*Rodriguez v. Comelec, G.R. No. 120099, July 24, 1996*].

f) 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 effectiveness of the Local Government Code.

i) In *Caasi v. Comelec*, 191 SCRA 229, the Supreme Court said that possession of a “green card” is ample evidence to show that the person is an immigrant to, or a permanent resident of, the United States of America.

g) Those who are insane or feeble-minded.

3. *Additional grounds for disqualification [Sec. 68, B.P. 881]*, After having filed a certificate of candidacy, the following shall be disqualified from continuing as candidate, or if he has been elected, from holding the office:

a) One who has given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions.

b) One who committed acts of terrorism to enhance his candidacy.

c) One who spent in his election campaign an amount in excess of that allowed by the Code.

d) One who has solicited, received or made contributions prohibited under Sec. 89 (transportation, food and drinks), Sec. 95 (public or private financial institutions, public utilities or exploitation of natural resources, contractors of public works or other government contracts; franchise holders or concessionaires; educational institutions receiving grants from the government, officials of the Civil Service or the AFP, foreigners or foreign corporations), Sec. 96 (foreign-sourced contributions), Sec. 97 (raising of funds through lotteries, cockfights, boxing bouts, bingo, beauty contests, etc.), and Sec. 104 (prohibited contributions to churches, schoolbuildings, roads, bridges, medical clinics, etc.).

e) One who has violated the provisions of Sec. 80 (campaign period), Sec. 83 (removal, destruction of lawful election propaganda), Sec. 85 (prohibited forms of propaganda). Sec. 86 (regulation of propaganda through mass media). In *Pangkat Laguna v. Comelec*, G.R. No. 148075, February 4, 2002, the Supreme Court held that the acts of Laguna Governor Lazaro in ordering the purchase of trophies, basketballs, volleyballs, chessboard sets, and the distribution of medals and pins to various schools, did not constitute a violation of Sec. 80 on premature campaigning. Respondent Lazaro was not in any way directly or indirectly soliciting votes; she was merely performing the duties and tasks imposed upon her by law, which duties she had sworn to perform as Governor of Laguna.

f) One who has violated the provisions of Sec. 261 (election offenses).

C. Certificate of Candidacy.

1. Effect of filing certificate of candidacy:

a) Officials holding appointive offices, including active members of AFP and officers of government-owned or -controlled corporations shall be considered ipso facto resigned [Sec. 66, B.P. 881]. In *PNOC Energy Development Corporation v. NLRC*, G.R. No. 100947, May 31, 1993, it was held that this section applies even to employees of government-owned or -controlled corporations without an original charter.

2. Formal defects in the certificate of candidacy.

a) While the certificate of candidacy is required to be under oath, the election of a candidate cannot be annulled on the sole ground of formal defects in his certificate, such as lack of the required oath [*De Guzman v. Board of Canvassers*, 48 Phil 211],

b) In *Jurilla v. Comelec*, G.R. No. 105435, June 2, 1994, it was held that the omission by the candidate (for Councilor in Quezon City) to indicate in his certificate of candidacy his precinct number and the particular barangay where he is a registered voter, is not sufficient ground to disqualify the candidate, because the Local Government Code does not require these data to be indicated in the certificate. It is enough that he is a registered voter in the precinct where he intends to vote which should be within the district where he is running for office.³

3. Death, disqualification or withdrawal of candidate. If after the last day for the filing of certificates of candidacy, an official candidate of a registered

political party dies, withdraws or is disqualified for any cause, only a person belonging to and certified by the same political party may file a certificate of candidacy for the office not later than mid-day of the day of the election [Sec. 77, B.P. 881].

a) In *Luna v. Comelec*, G.R. No. 165983, April 24, 2007, Luna filed her certificate of candidacy for the position of Vice-Mayor of Lagayan, Abra, as substitute for Hans Roger who withdrew his COC. Private respondents challenged the validity of the substitution, alleging that Hans Roger was only 20 years old and, therefore, disqualified to run for Vice Mayor; accordingly, he cannot be substituted by Luna. The Supreme Court ruled that the substitution was valid. When a candidate files his COC, the Comelec has only a ministerial duty to receive and acknowledge its receipt pursuant to Sec. 76 of the Omnibus Election Code. Since Hans withdrew his COC, and the Comelec found that Luna complied with all the procedural requirements for a valid substitution, Luna could validly substitute for Hans Roger.

4. *Withdrawal of Certificate of Candidacy.* The withdrawal of the certificate of candidacy shall effect the disqualification of the candidate to be elected for the position [*Ycain v. Caneja*, 81 Phil 773]. The withdrawal of the withdrawal, for the purpose of reviving the certificate of candidacy, must be made within the period provided by law for the filing of certificates of candidacy [*Monsale v. Nico*, 83 Phil 758].

a) There is nothing in Sec. 73, B.P. 881, which mandates that the affidavit of withdrawal must be filed with the same office where the certificate of candidacy to be withdrawn was filed. Thus, it can be filed directly with the main office of the Comelec, the office of the regional election director concerned, the office of the provincial election supervisor of the province to which the municipality belongs, or the office of the municipal election officer of the municipality. Accordingly, in this case, the Supreme Court held that there was valid withdrawal by petitioner of her certificate of candidacy for Mayor of Baybay, Leyte [*Loreto-Go v. Comelec*, G.R. No. 147741, May 10, 2001].⁵

5. *Filing of two certificates of candidacy.* When a person files two certificates of candidacy for different offices, he becomes ineligible for either position [Sec. 73, B.P. 881]. He may withdraw one of his certificates by filing a sworn declaration with the Commission before the deadline for the filing of certificates of candidacy. In *Loreto-Go v. Comelec*, *supra*., the petitioner filed two certificates; one for Governor of Leyte, and another for Mayor of Baybay, Leyte. With the Supreme Court ruling that she had validly withdrawn her certificate of candidacy for Mayor of Baybay, she was, therefore, considered a *bona fide* candidate for Governor of Leyte.

6. *Duty of the Comelec.* Subject to its authority over nuisance candidates and its power to deny due course to or cancel a certificate of candidacy under Sec. 78, B.P. 881, the Comelec shall have only the ministerial duty to receive and acknowledge receipt of the certificates of candidacy [Sec. 76, B.P. 881].

a) As early as in *Abcede v. Imperial*, 103 Phil 136, the Supreme Court said that the Commission has no discretion to give or not to give due course to a certificate of candidacy filed in due form. While the Commission may look into patent defects in the certificate, it may not go into matters not appearing on their face.

b) Accordingly, the Comelec may not, by itself, without proper proceedings, deny due course to or cancel a certificate of candidacy filed in due form. Sec. 78, B.P. 881, which treats of a petition to deny due course to or cancel a certificate of candidacy on the ground that any material representation therein is false, requires that the candidate must be notified of the petition against him, and he should be given the opportunity to present evidence in his behalf [*Cipriano v. Comelec*, G.R. No. 158830, August 10, 2004].

7. *Instances when the Comelec may go beyond the face of the certificate of candidacy:*

a) *Nuisance candidates* [R.A. 6646]. The Comelec may, *motu proprio*, or upon verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that the said certificate was filed: (i) To put the election process in mockery or disrepute; (ii) To cause confusion among the voters by the similarity of the names of the registered candidates; or (iii) By other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate has been filed, and thus prevent a faithful determination of the true will of the electorate.

i) The proclamation of the winning candidate renders moot and academic a motion for reconsideration filed by a candidate who had been earlier declared by the Comelec to be a nuisance candidate [*Garcia v. Comelec G R No. 121139, July 12, 1996*].

b) *Petition to deny due course or to cancel a certificate of candidacy.* A verified petition may be filed exclusively on the ground that any material representation contained in the certificate as required under Sec. 74 is false. The petition may be filed not later than 25 days from the time of the filing of the certificate of candidacy, and shall be decided, after due notice and hearing, not later than 15 days before the election [Sec. 78, B.P. 881].

i) Jurisdiction over a petition to cancel a certificate of candidacy lies with the Comelec in division, not with the Comelec *en banc* [*Garvida v. Sales, G.R. No. 122872, September 10, 1997*]. To deny due course or to cancel a certificate of candidacy entails the exercise by the Comelec of its quasi-judicial, not simply its administrative, powers. Hence, the Court may only compel the Comelec to exercise its discretion and resolve the matter but it may not control the manner of exercising such discretion [*Quizon v. Comelec, G.R. No. 177927, February 15, 2008*],

ii) In *Villaberv. Comelec, G.R. No. 148326, November 15, 2001*, respondent Douglas Cagas filed a petition for the cancellation of petitioner's certificate of candidacy on the ground that the latter made a false material representation in his certificate when he said that he is "eligible for the office sought to be elected to" since he had been convicted of violating B.P. 22, a crime involving moral turpitude.

iii) In *Loong v. Comelec, 216 SCRA 760*, it was held that the petition for the cancellation of the certificate of candidacy of Loong for alleged misrepresentation as to his age, filed by Ututalum beyond the 25-day period from the last day for filing certificates of candidacy cannot be given due course. Neither can it be treated as a quo warranto petition since there has been no proclamation yet. The ruling in *Frivaldo v. Comelec* cannot be invoked, because in the latter case, the ground for disqualification was citizenship. [As pointed out by Justice Gutierrez in his concurring opinion, where the disqualification is based on age, residence, or any of the other grounds for ineligibility, the prescriptive period should be applied strictly.]

iv) A facsimile of a petition for disqualification is not a genuine pleading; it is not sanctioned by the Comelec Rules of Procedure. Thus, the Comelec should not have acted on it, but should have awaited receipt of the original petition filed through registered mail [*Garvida v. Sales, 271 SCRA 767*].

c) *Filing of a disqualification case on any of the grounds enumerated in Sec. 68, B.P. 881.*ⁱ⁾

i) The jurisdiction of the Comelec to disqualify candidates is limited to those enumerated in Sec. 68, B.P. 881. All other election offenses are beyond the ambit of the Comelec jurisdiction. They are criminal and not administrative in nature, and the power of the Comelec over such cases is confined to the conduct of preliminary investigation on the alleged election offense for the purpose of prosecuting the alleged offenders before the courts of justice [*Codilla v. Comelec, G.R. No. 150605, December 10, 2004*],

ii) Under Section 2, Comelec Resolution No. 2050, the Comelec is mandated to dismiss a complaint for the disqualification of a candidate who has been charged with an election offense but who has already been proclaimed as the winner by the Municipal Board of Canvassers. In this case, the petitioners had already been proclaimed winners on May 18, 2001, and the private respondents filed their complaint for the disqualification of petitioners only on June 23, 2001. The Comelec found probable cause against the petitioners for the offense charged, and directed its Law Department to file the appropriate Information. Clearly, then, the Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed resolution disqualifying the petitioners from the positions they were respectively elected to [*Albana v. Comelec, G.R. No. 163302, July 23, 2004*],

8. *Effect of disqualification case.* Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong [*Sec. 6, R.A. 6646*],

a) Note that the Comelec can suspend proclamation only when evidence of the winning candidate's guilt is strong [*Codilla v. Comelec, supra*].

b) The use of the word "may" indicates that the suspension of the proclamation is merely permissive. If the Comelec does not find any sufficient ground to suspend proclamation, then a proclamation may be made [*Grego v. Comelec, 274 SCRA 481*].

c) Where the decision of the Comelec disqualifying the candidate is not yet final and executory on election day, the Board of Election Inspectors (BEI), in the exercise of its ministerial duty, is under obligation to count and tally the votes cast in favor of the candidate [*Papandayan v. Comelec, G.R. No. 147909, April 16, 2002*],

d) In *Ortega v. Comelec, 211 SCRA 297*, companion case to *Labo v. Comelec*, the Supreme Court held that it is incorrect to argue that since a candidate has been disqualified, the votes intended for the disqualified candidate should, in effect, be considered null and void. This would amount to disenfranchising the electorate in whom sovereignty resides, x x x The

rule would have been different if the electorate, fully aware in fact and in law of a candidate's disqualification, so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate obtaining the next highest number of votes may be deemed elected. [Note that in this case, the Comelec resolution disqualifying Labo had not yet become final on the day of the election.] This was reiterated in *Aquino v. Comelec*, 248 SCRA 400, where the Supreme Court said that if Aquino were disqualified before the elections, the votes for him, given the acrimony which attended the campaign, would not have automatically gone to second-placer Syjuco. The same rule was applied in *Nolasco v. Comelec*, 275 SCRA 762, *Sunga v. Comelec*, 288 SCRA 76, and *Codilla v. Comelec*, *supra*.

e) In *Aznar v. Comelec*, 185 SCRA 703, it was held that a petition for disqualification cannot be treated as a petition for quo warranto as the former is unquestionably premature.

f) In *Marcos v. Comelec*, 248 SCRA 300, it was held that Secs. 6 and 7, R.A. 6646, in relation to Sec. 78, B.P. 881, show that the Comelec does not lose jurisdiction even with the lapse of the period provided in Sec. 78, B.P. 881. It is settled doctrine that a statute requiring rendition of judgment within a specified period is generally construed to be merely directory.

g) In *Nolasco v. Comelec*, 275 SCRA 762, it was held that by virtue of the constitutional grant of plenary authority to the Comelec, it has jurisdiction over proclamation and disqualification cases, and the Comelec may not be hamstrung by its own procedure in Resolution No. 2050, even if the petition for disqualification is filed after the election. These petitions for disqualification are subject to summary hearing.

VI. CAMPAIGN; ELECTION PROPAGANDA; CONTRIBUTIONS AND EXPENSES

A. *Election campaign or partisan political activity.* Read Sec. 79, BP 881.

1. *Election campaign or partisan political activity* refers to an act designed to promote the election or defeat of a particular candidate or candidates to public office.

a) If done for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, etc., it shall not be considered as election campaign or partisan political activity.

b) It shall be unlawful for any person or any party to engage in election campaign or partisan political activity except during the campaign period [Sec. 80, BP 881].

i) The essential elements for violation of Section 80 are: [a] a person engages in an election campaign or partisan political activity as defined in Section 79; [b] the act is designed to promote the election or defeat of a particular candidate; and [c] the act is done outside the campaign period [*Lanot v. Comelec, G.R. No. 164858, November 16, 2006*],

ii) In this case, Henry Lanot, a candidate for Mayor of Pasig City, filed a petition to disqualify opponent Vicente Eusebio for engaging in an election campaign outside of the designated period by uttering defamatory statements against Lanot, causing the publication of a press release predicting his victory, installing billboards, streamers, posters and stickers printed with his surname in Pasig City, addressing a large group of people during a medical mission sponsored by the Pasig City government, and distributing shoes to schoolchildren in Pasig public schools to induce their parents to vote for him. The Court found that Eusebio filed his COC on December 29, 2003, and he allegedly committed the acts before the start of the campaign period commencing on March 24, 2004. Sec. 11 of RA 8436 moved the deadline for the filing of COCs from March 23, 2004 to January 2, 2004, or 81 days earlier. Under Sec. 11, the only purpose for the early filing of COCs is to give ample time for the printing of official ballots. Congress never intended that the early filing of COCs is to make the person immediately a candidate for purposes other than the printing of ballots. This legislative intent prevents the immediate application of Sec. 80 to those who file their COCs to meet the early deadline. The clear intention of Congress was to preserve the election period as fixed

by existing law prior to RA 8436, and one who files a COC within the early deadline "will still not be considered as a candidate". Accordingly, Eusebio became a candidate only on March 23, 2004 for all purposes other than the printing of ballots. Thus, his acts prior to March 23, 2004, even if constituting election campaign or partisan political activity are not punishable under Sec. 80 [*Lanot v. Comelec, supra.*].

c) Distinguish this from the prohibition on members of the Civil Service to engage, directly or indirectly, in any electioneering or partisan political campaign under Sec. 2 (4), Art. IX-B, Philippine Constitution.

2. *Public Rally.* Any political party or candidate shall notify the election registrar of any public rally said political party or candidate intends to organize and hold in the city or municipality, and within seven working days thereafter submit to the election registrar a statement of expenses incurred in connection therewith [Sec. 88, B.P. 881],

B. Lawful election propaganda. Read Sec. 82.

C. Prohibited election propaganda. Read Sec. 85.

1. In *Badoy v. Comelec*, 35 SCRA 285, the prohibition against certain forms of election propaganda was upheld as a valid exercise of the police power, "to prevent the perversion and prostitution of the electoral apparatus, and of the denial of due process of law".

a) But this evil does not obtain in a plebiscite, because in a plebiscite the electorate is asked to vote for or against issues, not candidates [*Sanidad v. Comelec, 181 SCRA 529*].

2. In *Chavez v. Comelec, G.R. No. 162777, August 31, 2004*, the Supreme Court upheld the validity of the Comelec resolution that all propaganda materials, including 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, be immediately removed, otherwise, this shall be presumed as premature campaigning in violation of Sec. 80 of the Omnibus Election Code.³

3. See *National Press Club v. Comelec*, 207 SCRA 1; *Adiong v. Comelec*, 207 SCRA 712; *Social Weather Stations v. Comelec*, G.R. No. 147571, May 5, 2001; discussed in **Freedom of Expression, Chapter 6, CONSTITUTIONAL LAW**.

D. Prohibited Contributions. Read Secs. 95-97.

E. Limitations on expenses; lawful expenditures. Read Secs. 100-102.

1. Sec. 13, R.A. 7166 provides that for the 1992 synchronized elections, the aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

a) For candidates: P10 for President and Vice President; and for other candidates P3.00 for every voter currently registered in the constituency where he filed his certificate of candidacy; Provided, that a candidate without any political party and without support from any political party may be allowed to spend P5.00 for every such voter; and

b) For political parties: P5.00 for every voter currently registered in the constituency or constituencies where it has official candidates.

F. Statement of contributions and expenses [Sec. 14, R.A. 7166]. Every candidate and treasurer of the political party shall, within 30 days after the day of the election, file in duplicate with the offices of the Commission, the full, true and itemized statement of all contributions and expenditures in connection with the election.

1. No person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required. The same prohibition shall apply if the political party that nominated the winning candidate fails to file the statement required herein.

2. Except candidates for elective barangay office, failure to file the statements or reports in connection with electoral contributions and expenditures as required shall constitute an administrative offense for which the offenders shall be liable to pay an administrative fine ranging from P1,000 to P30,000 in the discretion of the Commission. The fine shall be paid within 30 days from receipt of notice of such failure; otherwise, it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender. For the commission of a second or subsequent offense the administrative fine shall range from P2,000 to P60,000, in the discretion of the Commission. In addition, the offender shall be subject to perpetual disqualification to hold public office.

a) In *Pilar v. Comelec*, 245 SCRA 759, the Supreme Court said that the requirement to file the statement covers even those who withdrew as candidates after having filed their certificates, because Sec. 14, R.A. 7166, does not make any distinction.

VII. BOARD OF ELECTION INSPECTORS; WATCHERS

A. Composition of the Board of Election Inspectors (BEI): A chairman, a member and a poll clerk, who must be public school teachers. A member must be of good moral character and irreproachable reputation, a registered voter of the City or municipality, never been convicted of any election offense or any other crime punishable by more than 6 months imprisonment, able to speak and write English or the local dialect.

1. *Disqualification*, (a) Must not be related within the 4th civil degree by consanguinity or affinity to any member of the BEI or to any candidate to be voted for in the polling place, (b) Must not engage in any partisan political activity.

B. Powers of the BEI: Conduct the voting and counting of votes in the polling place; act as deputies of the COMELEC in supervision and control of the polling place; maintain order within the polling place and its premises to keep access thereto open and unobstructed and to enforce obedience to its lawful orders, and perform such other functions as prescribed by the Code or by the rules of the Comelec.

1. *Proceedings:* Shall be public and held only in the polling place although the counting of votes and preparation of the return may be done in the nearest safe barangay or school building within the municipality by unanimous vote of the board and concurred in by a majority of the watchers present, if there is imminent danger of violence, terrorism, disorder or similar causes. The BEI shall act through its Chairman, and shall decide without delay by majority vote all questions which may arise in the performance of its duties.

C. Watchers. Each candidate and political party or coalition of political parties duly registered with the Commission and fielding candidates in the May 11, 1998 elections including those participating under the party-list system of representation, may appoint two watchers, to serve alternately, in every polling place. However, candidates for Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan, belonging to the same ticket or slate shall collectively be entitled to one watcher. Duly accredited citizens' arms of the Commission shall be entitled to appoint a watcher in every polling place. Other civic, religious, professional, business, service, youth and any other similar organizations, with prior authority from the Commission, shall be entitled collectively to appoint one watcher in every polling place.

1. *Qualifications:* Qualified voter of the city or municipality, of good reputation, never been convicted of any election offense or any crime, knows how to read and write English, Pilipino, or any of the prevailing local dialects, and not related within the 4th civil degree by consanguinity or affinity to any member of the BEI in the polling place where he seeks appointment as watcher.

2. *Rights and duties:* Stay in the space reserved for them inside the polling place; witness and inform themselves of the proceedings of the BEI; take notes, photographs of proceedings; file protest against any irregularity or violation of law; be furnished with a certificate of the number of votes cast for each candidate, duly signed and thumbmarked by the members of the BEI.

VIII. CASTING OF VOTES

A. *Procedure.* Read Secs. 190-198, BP 881.

1. *Preparation of ballots for illiterate and disabled.* An illiterate or disabled voter may be assisted in the preparation of his ballot by a relative within the 4th civil degree by consanguinity or affinity; or, if he has none, by any person of his confidence who belongs to the same household, or by any member of the BEI; Provided, that no voter shall be allowed to vote as an illiterate unless so indicated in his registration record; and Provided, further, that in no case shall an assistor assist more than three times, except the members of the BEI.

2. *Authentication of ballot.* In every case, the chairman of the board shall, in the presence of the voter, affix his signature at the back of the ballot before issuing it to the voter. Failure to authenticate the ballot shall be noted in the Minutes of Voting and Counting of Votes, and shall constitute an election offense.

a) There is nothing in the law that provides that a ballot which has not been authenticated shall be deemed spurious. The law merely makes the Chairman of the BEI accountable for such an omission [*Libanan v. HRET, G.R. No. 129783, December 22, 1997*]. Thus, it was held in *Punzalan v. Comelec*, 289 SCRA 702, that the ballot is valid even if it is not signed at the back by the Chairman of the BEI.

3. *Challenge of illegal voter.* Any voter or watcher may challenge any person offering to vote for not being registered, for using the name of another, or for suffering from existing disqualification. A challenge may likewise be made on the ground that the challenged person has received or expects to receive, paid, offered or promised to pay, contributed, offered or promised to contribute money or anything of value as consideration for his vote or for the vote of another; made or received a promise to influence the giving or withholding of any such vote; or made a bet or is interested directly or indirectly in a bet which depends upon the results of the election. The challenged voter shall take an oath before the BEI that he has not committed any of the acts alleged in the challenge.

a) The swqrn statement of the challenged voter may then be used as a basis for subsequent prosecution for perjury.

IX. COUNTING OF VOTES

A. Procedure. Read Secs. 206-210, BP 881.

1. *Manner of counting votes [Sec. 25, R.A. 7166]:* In reading the individual official ballots during the counting, the chairman, poll clerk and the third member shall assume such positions as to provide the watchers and the members of the public as may be conveniently accommodated in the polling place, unimpeded view of the ballot being read by the chairman, of the election returns and the tally board being simultaneously accomplished by the poll clerk and the third member respectively, without touching any of these election documents. The table shall be cleared of all unnecessary writing paraphernalia. Any violation of this requirement shall constitute an election offense punishable under Secs. 263 and 264 of the Omnibus Election Code.

B. Rules for appreciation of ballots. Read Sec. 211, BP 881.

1. Some rules:

a) *Idem sonans.* A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor.

b) When two or more words are written on the same line on the ballot, all of which are the surnames of two or more candidates, the same shall not be counted for any of them, unless one is the surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter.

c) When on the ballot is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall be counted in favor of the latter.

d) When two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent, the vote shall not be counted for either.

e) Ballots which contain prefixes such as "Sr.", "Mr.", "Datu", "Ginoo", etc., shall be valid.

f) The use of nicknames and appellation of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul

such vote, except when they were used as a means to identify the voter, in which case, the whole ballot is invalid.

g) If the candidates voted for exceed the number of those to be elected, the ballot is valid, but the votes shall be counted only in favor of the candidates whose names were firstly written by the voter within the space provided for said office in the ballot until the authorized number is covered.

2. *Some rulings on appreciation of ballots:*

a) Appreciation of ballots is a function of the BEI, not of the Board of Canvassers [*Sanchez v. Comelec*, 153 SCRA 67],

b) Where the name of the candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he* is a candidate, the vote shall be considered valid for such candidate. In appreciating a ballot, the object should be to ascertain and carry into effect the intention of the voter if it can be determined with reasonable certainty. Thus, the name of the candidate preceded by the words "Bo. Barangay" should be interpreted to mean "Po. (or Punong) Barangay", and should be counted for the candidate [*Bautista v. Castro*, 206 SCRA 305]. But where the name of the candidate is written seven times in the ballot, it is clear that the same is intended to identify the ballot, and thus, the vote should be invalidated [*Bautista v. Castro, supra.*].

c) In *Villagracia v. Comelec*, G.R. No. 168296, January 31, 2006, it was held that a distinction must be made between marks that were apparently carelessly or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification, which invalidates it. In this case, the invalidated ballots are marked with the words "Joker" (14 ballots), "Alas" (6 ballots), "Queen" (7 ballots), and "Kamatis" (7 ballots), all written in the number 7 slot of the list of Kagawad for Sangguniang Barangay, and appearing only in ballots wherein the Punong Barangay voted for was petitioner. Clearly, the marks indicate no other intention than to identify the ballots; indubitably, these are marked ballots and were properly invalidated.

d) In *Bautista v. Comelec*, G.R. No. 133840, November 13, 1998, the Supreme Court upheld the use of separate tallies for votes considered stray (because of the pendency of a motion for reconsideration filed by the candidate who was declared a nuisance candidate). After the motion for reconsideration was denied by the Comelec, the votes in the separate tally were allowed to be credited as part of the valid votes cast in favor of the petitioner.

C. Election Return. The BEI shall prepare the election return simultaneously with the counting of the votes in the polling place.

1. In the election for President, Vice President, Senators, and Members of the House of Representatives, and parties, organizations or coalitions participating under the party-list system, the returns shall be prepared in seven copies, and distributed as follows:

1st - to city or municipal board of canvassers;

2nd - to Congress, directed to the President of the Senate;

3rd - to the Commission on Elections;

4th - to the dominant majority party as determined by the Commission;

5th - to the dominant minority party as determined by the Commission;

6th - to the citizen's arm authorized by the Commission to conduct an unofficial count;

7th - deposited inside the compartment of the ballot box for valid

ballots.

2. In the election of local officials:

1st - to the city or municipal board of canvassers;

2nd - to the Commission on Elections

3rd - to the provincial board of canvassers

4th - to the dominant majority party as determined by the Commission;

5th - to the dominant minority party as determined by the Commission;

6th - to the citizen's arm authorized by the Commission to conduct an unofficial count;

7th - to be deposited inside the compartment of the ballot box for valid

ballots.

D. Announcement of the result of the election. Upon the completion of the election returns, the chairman of the BEI shall orally and publicly announce the total number of votes received in the election in the polling place by each and every one of the candidates.

E. BEI to issue Certificate of Votes to Watchers. BEI to issue Certificate of Votes to Watchers. This certificate is issued upon request. Sec. 16, R.A. 6646, requires that the Certificate of Votes must be signed and thumbmarked by each member of the BEI which issues the same.

1. The Certificate of Votes is evidence not only of tampering, alteration, falsification or any other anomaly in the preparation of the election returns, but also of the votes obtained by the candidates [*Balindong v. Comelec*, 27 SCRA 567].
2. However, in *Garay v. Comelec*, 261 SCRA 222, the Supreme Court held that a Certificate of Votes can never be a valid basis for canvass; it can only be evidence to prove tampering, alteration, falsification or any other anomaly committed in the election returns concerned, when duly authenticated. A Certificate of Votes does not constitute sufficient evidence of the true and genuine results of the elections; only election returns are. In like manner, neither is the tally board sufficient evidence of the real results of the election.

X. CANVASS AND PROCLAMATION

A. *Canvassing by Provincial, City, District and Municipal Board of Canvassers.* Read Secs. 28-29, RA 7166

1. *Composition of the Board of Canvassers.*

a. Provincial: The provincial election supervisor or a lawyer in the regional office of the Comelec, as chairman, the provincial fiscal, as vice chairman, and the provincial superintendent of schools as member. In the event of non-availability, absence, disqualification or incapacity, substitute members are the following, in the order named: Provincial Auditor, Register of Deeds, Clerk of Court nominated by the Executive Judge, and any other available appointive provincial official.

b) City: The city election registrar or a lawyer of the Comelec, as chairman, the city fiscal, as vice chairman, and the city superintendent of schools, as member. Substitute members are officials in the city corresponding to the substitutes in the provincial board of canvassers.

c) Municipal: The election registrar or a representative of the Comelec, as chairman, the municipal treasurer, as vice chairman, and the most senior district school supervisor, or in his absence, a principal of the school or the elementary school, as member. Substitute members are the Municipal Administrator, Municipal Assessor, Clerk of Court nominated by the Executive Judge, or any other available appointive municipal officials.

2. *Prohibited relationship.* Related within the 4th civil degree by consanguinity or affinity to any of the candidates whose votes will be canvassed by the Board, or to any member of the same Board.

3. *Prohibition against leaving station.* During the period beginning election day until proclamation of winning candidates, no member of the Board shall be transferred, assigned or detailed outside of his official station without the prior authority of the Comelec.

B. *Congress as Board of Canvassers for election of President and Vice President [Sec. 30, R.A. 7166],¹*

1. Congress shall determine the authenticity and due execution of the certificates of canvass for President and Vice President as accomplished and transmitted to it by the local boards of canvassers, on a showing that:

Each certificate of canvass was executed, signed and thumbmarked by the chairman and transmitted to Congress by them; (b) Each certificate of canvass contains the names of all the candidates for President and Vice President and their corresponding votes in words and in figures; and (c) There exists no discrepancy in other authentic copies of the certificates of canvass or discrepancy in the votes of any candidate in words and figures in the same certificate.

2. When the certificate of canvass, duly certified by the board of canvassers of each province, city or district, appears to be incomplete, the Senate President shall require the board of canvassers concerned to transmit by personal delivery, the election returns from polling places that were not included in the certificate of canvass and supporting statements.

3. When it appears that any certificate of canvass or supporting statement of votes by precinct bears erasures or alterations which may cast doubt as to the veracity of the number of votes stated therein and may affect the result of the election, upon request of the presidential or vice presidential candidate concerned or his party, Congress shall, for the sole purpose of verifying the actual number of votes cast for President and Vice President, count the votes as they appear in the copies of the election returns submitted to it.

4. Cases:

a) Sec. 18.5 of R.A. 9189 (The Overseas Absentee Voting Act of 2003), insofar as it grants sweeping authority to the Commission on Elections to proclaim all winning candidates, is unconstitutional as it is repugnant to Sec. 4, Art. VII of the Constitution, which vests in Congress the authority to proclaim the winning Presidential and Vice-Presidential candidates [*Makalintal v. Comelec, supra.*]

b) In *Ruy Elias Lopez v. Senate of the Philippines, supra.*, it was held that Congress may validly delegate the preliminary determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee constituted under the Rules adopted by the Joint Session of Congress.

c) In *Pimentel, Jr. v. Joint Committee of Congress to Canvass the Votes Cast for President and Vice President, supra.*, the Supreme Court held that even after Congress had adjourned its regular session, it may continue to perform the constitutional duty of canvassing the presidential and vicepresidential election results without need of any call for a special session by the President.

C. COMELEC en banc as National Board of Canvassers for Senatorial Elections [Sec. 30, RA 7166].

1. Pursuant to Sec. 30, R.A. 7166, the power to determine the authenticity and due execution of the Certificates of Canvass (COCs) for Senators exclusively rests in the Comelec, as National Board of Canvassers, not on the provincial board of canvassers. Thus, the Special Provincial Board of Canvassers (SPBOC) validly denied the repeated motions of Pimentel to question the Bedol Provincial Board of Canvassers and the Municipal Board of Canvassers during its proceedings, because allowing the same would be *ultra vires*. Furthermore, it would be tantamount to allowing a pre-proclamation contest which is prohibited by Sec. 15, R.A. 7166 [*Pimentel III v. Comelec*, G.R. No. 178413, March 13, 2008].

D. Duty of the Board of Canvassers. A canvassing board performs a purely ministerial function, that of compiling and adding the results as they appear in the returns transmitted to it [*Guiao v. Comelec*, 137 SCRA 366].

1. The Comelec shall have direct control and supervision over the board of canvassers.

2. During the canvass, the Board of Canvassers prepares the Statement of Votes, which is tabulation per precinct of the votes obtained by the candidates as reflected in the election returns. It is the Statement of Votes which forms the basis of the Certificate of Canvass and of the proclamation.

a) In *Castromayor v. Comelec*, 250 SCRA 298, after the Municipal Board of Canvassers had proclaimed the petitioner as the 8th winning candidate for member of the Sangguniang Bayan of Calinog, Iloilo, on the strength of an erroneous tabulation of votes, the Board of Canvassers discovered that it should have been Demorito, not the petitioner, who should have been proclaimed, and thus post-haste faxed a copy of the correct tabulation to the Comelec. The Comelec then issued a resolution directing the Board of Canvassers to reconvene and annul the proclamation of the petitioner, and to proclaim the winning candidate. On petitioner's claim that no notice nor opportunity to be heard was given to him by the Comelec, the Supreme Court said that, in order to obviate the necessity of remanding the case to the Comelec for further proceedings, the Board of Canvassers should proceed to hear the petitioner's objections and, only if warranted, should it then annul the proclamation of the petitioner.

E. Nature of Proceedings. Canvass proceedings are administrative and summary in nature.

1. A majority vote of all the members of the board shall be necessary to render a decision [Sec. 225, B.P. 881],

2. Where it has been duly determined by the Comelec that actual voting and election by the registered voters had taken place, the election returns cannot be disregarded and excluded — with the corresponding disenfranchisement of voters — but must be accorded *prima facie* status as bona fide reports of the result of the voting for canvassing and proclamation purposes, x x x The summary nature of the proceedings requires that the written objections (to the returns) be filed only during this stage, because it is only at this time that the inclusion or exclusion of any return is in issue; mere allegations of duress, coercion, fraud, cannot invalidate election returns which are otherwise clean on their face. See *Grand Alliance for Democracy v. Comelec*, 150 SCRA 665; *Guiao v. Comelec*, *supra*.

3. Any registered political party, coalition of parties, through their representatives, and any candidate has the right to be present and to counsel during the canvass of election returns. They shall have the right to examine the returns being canvassed without touching them, to make their observations thereon, and file their challenges in accordance with the rules and regulations of the Comelec [Sec. 25, R.A. 6646],

4. It shall be unlawful for any officer or member of the AFP, including the National Police, or any peace officer or any armed or unarmed persons belonging to an extra-legal police agency, special forces, reaction forces, strike forces, home defense forces, barangay self-defense units, etc. to enter the room where the canvassing of the election returns are held, and within a radius of 50 meters from such room [Sec. 232, B.P. 881],

5. The Comelec may order the annulment of the Certificate of Canvass which it found to be tampered after examining the copies of the election returns of the Municipal Judge and the Comelec — not the copy of the Municipal Board of Canvassers — because all the copies of the election returns are original copies although the copy of the Municipal Board of Canvassers is the original copy. Sec. 15, R.A. 7166, does not specify that the Comelec shall use the copy of the election return of the Municipal Board of Canvassers in correcting a manifest error [*Mastura v. Comelec*, 285 SCRA 493],

F. *Proclamation.*, After the canvass of election returns, in the absence of a perfected appeal to the Comelec, the Board of Canvassers shall proclaim the winning candidates.¹

1 ■ It is now settled that an incomplete canvass of votes is illegal and cannot be made the basis of a proclamation. A canvass cannot be reflective

of the true vote of the electorate unless all returns are considered and none is omitted. When the municipal board of canvassers, in this case, disregarded the five election returns, it in effect disenfranchised the voters of the excluded precincts. The fact that a candidate illegally proclaimed has assumed office is not a bar to the exercise by the Comelec of the authority to annul any canvass and proclamation illegally made. It is true that after proclamation, the remedy of a party aggrieved in an election is an election protest. But this is on the assumption that there has been a valid proclamation. Where a proclamation is null and void, the proclaimed candidate's assumption of office cannot deprive the Comelec of the power to declare such a proclamation a nullity [*Utto v. Comelec*, G.R. No. 150111, January 31, 2002].

2. In *Baterina v. Comelec*, 205 SCRA 1, where what was filed was a petition to restrain the canvass and proclamation, or to suspend the effects of any proclamation, it was held that the petition was not the appeal referred to in Sec. 245 which will operate to bar the Provincial Board of Canvassers from making any proclamation without authority from the Comelec.

3. Petitioners, members of the Board of Canvassers, who proclaimed as the 8th winning candidate one who did not obtain the 8th highest number of votes, may be criminally prosecuted for violation of Sec. 231 (failure to proclaim the winning candidate) [*Agujetas v. Court of Appeals*, 261 SCRA 17].⁴

4. Nolaw provides for a reglementary period within which to file a petition for annulment of election if there is, as yet, no proclamation [*Loong v. Comelec*, 257 SCRA 1].

XI. PRE-PROCLAMATION CONTROVERSY

A. *Defined.* A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Comelec, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns [Sec. 241, B.P. 881]. The institution of the pre-proclamation cointroversy was intended to prevent the nefarious practice known as “grab-the-proclamation, prolong-the-protest”.

1. *No pre-proclamation cases in election of national officials* [Sec. 15, R.A. 7166], For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it. Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission.

a) Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon. The Commission shall summarily decide the case within five (5) days from the filing thereof [Sec. 19, R.A. 7166], In this case, therefore, the Comelec may still entertain a pre-proclamation controversy involving the illegal composition or proceedings of the Board of Canvassers [*Lim v. Comelec*],

b) *Manifest errors.* Likewise, the Comelec may entertain petitions for the correction of “manifest errors” in the Certificate of Canvass or in the election returns. But to be “manifest”, the errors must appear on the face of the Certificates of Canvass or election returns sought to be corrected, and objections thereto must have been made before the Board of Canvassers and specifically noted in .the minutes of their respective proceedings [*Chavez v. Comelec*, 211 SCRA 315]. A “manifest error” is one that is visible to the eye or obvious to the understanding; that which is open, palpable, incontrovertible, needing no evidence to make it more clear [*O’Hara v. Comelec*, G.R. Nos. 148941-42, March 12, 2002].

i) A petition for correction of errors in the Certificate of Canvass may be filed at any time before proclamation [*Bince v. Comelec*, 242 SCRA 273]. However, in *Torres v. Comelec*, 270 SCRA 583, it was held that although the provision applies to a pre-proclamation controversy, there is nothing to prevent its application to cases in which the validity of the proclamation is in question. Since the Statement of Votes is the basis of the Certificate of Canvass and of the proclamation, any error in the Statement affects the validity of the proclamation. Thus, even if the petitioner had already been proclaimed, his proclamation is void, and the Comelec has the power to annul the same.

ii) Corrections should be made by inserting the corrections in the Statement of Votes or by preparing a new Statement of Votes incorporating the corrections [*Ramirez v. Comelec*, 270 SCRA 590].

2. *Pre-proclamation case different from an action for annulment of election results or declaration of failure of elections.* In *Abaya v. Comelec*, G.R. No. 145007-08, January 28, 2003, the Supreme Court had occasion to reiterate the distinction, as earlier pronounced in *Loong v. Comelec*, *supra*, viz: While the Comelec is restricted in pre-proclamation cases to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, in cases of actions for annulment of election results or declaration of failure of elections, the Comelec may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean.

a) But this principle that, in pre-proclamation cases, the Comelec is without jurisdiction to go beyond or behind the election returns and investigate election irregularities presupposes that the returns "appear to be authentic and duly accomplished on their face". Where, as in this case, there is a *prima facie* showing that the return is not genuine, several entries having been omitted in the questioned election return, the principle does not apply. The Comelec is not powerless to determine if there is basis for the exclusion of the questioned election return [*Lee v. Comelec*, G.R. No. 157004, July 4, 2003]. Thus, in *Jainal v. Comelec*, G.R. No. 174551, March 7, 2007, the Supreme Court said that the Comelec did not have to look at other evidence to conclude that the election returns were manufactured, because the defects were apparent on the face of the election returns themselves. Earlier, in *Chu v. Comelec*, 377 Phil. 509 (1999), it was already intimated that a pre-proclamation case is the proper remedy if the defects and irregularities are apparent from a physical inspection of the election returns.

b) But where the resolution of the issues raised would require the Comelec to "pierce the veil" of election returns that appear *prima facie* regular,

the remedy is a regular election protest [*Sebastian v. Comelec*, 327 SCRA 406 (2000)].

B. Comelec Jurisdiction. The Comelec has exclusive jurisdiction over pre-proclamation cases.

1. While the Comelec has merely appellate jurisdiction over election contests involving municipal offices, it cannot be deprived of its exclusive jurisdiction over pre-proclamation contests, indeed, it is immaterial if some of the grounds adduced are grounds for an election contest rather than for a pre-proclamation controversy [*Olfato v. Comelec*, 103 SCRA 741].

C. Issues which may be raised [Sec. 243, B.P. 881],

1. *Illegal composition or proceedings of the Board of Canvassers.*

a) Under Comelec rules, if the petition involves the illegal composition of the Board of Canvassers, it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member whose capacity as such is objected to [*Villamor v. Comelec*, G.R. No. 169865, July 1, 2006].

b) By participating in the proceedings, the petitioner is deemed to have acquiesced in the composition of the Board of Canvassers. A petition based on illegal composition of the board of canvassers should be filed immediately when the Board begins to act. A petition filed five days after proclamation is filed out of time [*Laodeno v. Comelec*, 276 SCRA 705].

2. *The canvassed election returns are incomplete contain material defects in the same returns or in other authentic copies thereof, as mentioned in Secs. 233, 234, 235 and 236 of this Code.*

a) Sec. 233: When the election returns are delayed, lost or destroyed, the Board may use any of the authentic copies of said election returns or a certified copy issued by the Comelec. [Note: Notwithstanding the fact that not all the returns have been received, the Board may terminate the canvass and proclaim the winners on the basis of available returns if the missing election returns will not affect the results of the election.]

b) Sec. 234: If some requisites, in form or data, had been omitted in the election returns, the Board shall call for all the members of the BEI to complete or correct the return. [Note: For this purpose, the Board may even order the opening of the ballot box and recount the votes.]

i) It is error for the Comelec to exclude from the canvass election returns where the defect in the return refers only to some incomplete data, inasmuch as Sec. 234, B.P. 881, should then be applied [*Patoray v. Comelec* 249 SCRA 440].

c) Sec. 235: When the election returns submitted to the Board appear to be tampered with, altered or falsified after they have left the hands of the BEI, or otherwise not authentic, or prepared under duress, force, intimidation, etc., the Board shall use the other copies of said returns x x x If the other copies are likewise tampered with, etc., the Board or any candidate affected shall bring the matter to the Comelec x x x The Comelec, after giving notice to all candidates concerned, and after being satisfied that the integrity of the ballot box had been duly preserved, shall order the opening of the ballot box and order the BEI to recount the votes of the candidates affected, and to prepare a new election return.

d) Sec. 236: Where there exists discrepancies in other authentic copies of the returns or discrepancies in the votes of any candidate in words and figures in the same return, and the difference affects the results of the election, the Comelec, upon motion of the Board of Canvassers shall order the opening of the ballot box to recount the votes cast for the purpose of determining the true result of the count of votes of the candidates concerned.

i) Where the Certificate of Votes shows tampering, alteration and falsification, or any other anomaly in the preparation of the election return, the Comelec should order a recount of the votes cast in the precinct, after determining that the ballot box has not been tampered with. The failure of the Comelec to do so, after excluding the return, will result in the disenfranchisement of the voters in the particular precinct. Neither can the Certificate of Votes be used for the canvass because it was signed only by the Chairman [*Patoray v. Comelec*, 249 SCRA 440].

[NOTE: While the duty of the Board of Canvassers is ministerial and, as a general rule, it may not inquire into issues beyond the election return, the situations contemplated in Secs. 234, 235 and 236 allow the Board of Canvassers to order the opening of the ballot box and recount the votes of the candidates affected.]

3. *The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic.*

a) See *Lagumbay v. Comelec*, 16 SCRA 175, on what an obviously manufactured return is. It was in this case that the Supreme Court enunciated the *doctrine of statistical improbabilities*.

b) In pre-proclamation contests, the Board of Canvassers and the Comelec are not required to look beyond or behind the election returns which are, on their face, regular and authentic. In this case, petitioner failed to justify the exclusion of the challenged returns on the ground of duress, intimidation, threat or coercion, inasmuch as he offered only self-serving affidavits. Absent any evidence appearing on the face of the returns that they are indeed spurious, manufactured or tampered with, the election irregularities cited by the petitioner, which would require evidence *aliunde*, cannot be raised in a pre-proclamation controversy [*Dumayas, Jr. v. Comelec, G.R. No. 141952-53, April 20, 2001*],

. 4. When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

D. Procedure. Read Secs. 244-245, B.R 881; Secs. 17-22, R.A. 7166.

1. *Commencement of pre-proclamation controversy [Sec. 17, R.A. 7166]*, Questions affecting the composition or proceedings of the board of canvassers may be initiated directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

2. *Summary disposition of pre-proclamation controversies [Sec. 18, R.A. 7166]*, All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within 7 days from receipt thereof. Its decision shall be executory after the lapse of 7 days from receipt by the losing party.

3. *Disposition of contested election returns [Sec. 20, R.A. 7166]*,

a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under the Omnibus Election Code shall submit their oral objections to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within 24 hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for, written objections. Within the same period of 24 hours after presentation of the objection any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms. The evidence attached to the objections or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the Chairman affixing his signature at the back of each and every page thereof.

d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within 48 hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of 5 days thereafter, an appeal taken to the Commission.

i) In *Castromayor v. Comelec*, 250 SCRA 298, it was held that a proclamation based on incomplete returns is void. Similarly, in *Jamil v. Comelec*, G.R. No. 123648, December 15, 1997, it was ruled that where there is yet no complete canvass, there can be no valid proclamation.

g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within 7 days from the receipt of said records and evidence. Any appeal brought before the

Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed. The decision of the Commission shall be executory after the lapse of 7 days from receipt thereof by the losing party.

i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

4. *Partial proclamation [Sec. 21, R.A. 7166].* Notwithstanding the pendency of any pre-proclamation controversy, the Commission may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

[Note: The procedure prescribed above is mandatory; non-compliance with any of the steps is fatal to the pre-proclamation petition.]

D. Cases.

1. *Sanchez v. Comelec*, 153 SCRA 67. On the basic issue of whether Sanchez' petition for recount and/or re-appreciation of ballots may be considered a pre-proclamation controversy, the Supreme Court said NO, for the following reasons:

a) An election return is "incomplete" if there is an omission in the election return of the name of any candidate and/or his corresponding votes, or in case the number of votes for a candidate had been omitted. Here, the election returns are complete and indicate the name of Sanchez as well as the number of votes counted and appreciated in his favor by the BEI. x x x Errors in appreciation of ballots by the BEI are proper subject for an election protest and not for a pre-proclamation contest.

b) The appreciation of ballots is not part of the proceedings of the Board of Canvassers; it is performed by the BEI at the precinct level. This is reiterated in *Chavez v. Comelec, supra..*

c) The enumeration of the issues which may be raised in a pre-proclamation controversy under Sec. 243, BP 881, is restrictive and exclusive. The complete election returns whose authenticity is not in question must be *prima facie* considered valid for the purpose of canvass and proclamation.

d) To expand the issues beyond those enumerated in Sec. 243 and allow recount or re-appreciation where a claim of misdeclaration of stray votes is made would open the floodgates to such claims and paralyze canvass and proclamation proceedings, given the propensity of the loser to demand a recount. The policy of the law is that a pre-proclamation controversy should be summarily decided.

e) The ground for recount relied upon by Sanchez is clearly not among the issues that may be raised in a pre-proclamation controversy. His allegation of invalidation of "Sanchez" votes intended for him bears no relation to the correctness and authenticity of the election returns canvassed.

2. In *Patoray v. Comelec*, 279 SCRA 470, it was held that where the objections to the inclusion of the election returns are directed primarily at the ballots reflected in the returns, the issue involves appreciation of ballots and cannot be raised in a pre-proclamation controversy.

3. In *Balindong v. Comelec*, 260 SCRA 494, and in *Matalam v. Comelec*, 271 SCRA 733, the Supreme Court said that the technical examination of the signatures and thumb marks of voters runs counter to the nature and scope of a pre-proclamation contest; the remedy is to raise these issues in an election protest.

4. In *Alfonso v. Comelec*, G.R. No. 107847, June 2, 1994, after the Comelec had ruled that the votes for Pedro Alfonso should not be credited to petitioner Irma Alfonso (who substituted for her father, Pedro, because the latter died on the eve of the election), the Comelec ordered the City Board of Canvassers to re-canvass the election returns, without opening the ballot boxes, and proclaim the winning candidates. On the denial by the Comelec of petitioner's request that the ballot boxes be opened and the votes counted, the Supreme Court held that the Comelec did not commit grave abuse of discretion, because the prayer for re-opening of ballot boxes is not a proper issue in a preproclamation controversy, but should be threshed out in an election contest.

5. *Villaroya v. Comelec*, 155 SCRA 633. In a pre-proclamation contest, the Comelec may order the correction of a clerical error in the Statement of Votes (prepared by the Board of Canvassers to correspond to the figures reflected in the election returns — even if the candidate/representative failed to file the timely protest during the canvassing, as the error in the Statement of Votes was not apparent on its face).⁶

6. *Duremdes v. Comelec*, 178 SCRA 746. The failure to object to the Statement of Votes before the Board of Canvassers does not constitute a

to raising the issue for the first time before the Comelec; the law is silent as to when they may be raised. The Statement of Votes supports the certificate of canvass and shall be the basis of proclamation. Consequently, any error in the Statement of Votes would affect the proclamation made on the basis thereof, x x x An election contest presupposes a valid proclamation. When the proclamation is null and void, it is no proclamation at all, and the assumption of office by the proclaimed candidate cannot deprive the Comelec of the power to declare such nullity in an appropriate pre-proclamation controversy.

a) Thus, in *Castromayor v. Comelec*, 250 SCRA 298, the Supreme Court said that any party dissatisfied with the ruling of the Board of Canvassers (after it was ordered by the Comelec to reconvene and annul the proclamation of the petitioner) shall have the right to appeal to the Comelec. Since the Statement of Votes which was to be corrected by the Board forms the basis of the Certificate of Canvass and the proclamation, petitioner begs the question by saying that this is not a pre-proclamation controversy and the procedure for pre-proclamation controversies cannot be applied to the correction in the computation of the total number of votes obtained by the candidates in the Statement of Votes.

b) Likewise, in *Mentang v. Comelec*, G.R. No. 110347, February 4, 1994, the Court declared that it had already ruled that the filing of a petition to annul a proclamation suspends the running of the 10-day period within which to file an election contest, provided that there are allegations which, when proved, will render the proclamation null and void. Such petition may be filed directly with the Comelec even as a pre-proclamation controversy, provided it is done within ten days after proclamation. [NOTE: A petition to correct manifest errors must be filed within five days from proclamation, if filed directly with the Comelec; while there does not seem to be a fixed time frame within which to file a petition to annul a proclamation, the same being limited only by the standard of reasonableness.]⁷

7. In *Bince v. Comelec*, 242 SCRA 273, it was held that the Comelec cannot be faulted for subsequently annulling a proclamation on account of a mathematical error committed by the Board of Canvassers in the computation of votes received by both petitioner and private respondent. What is sought by private respondent is the correction of manifest mistakes in the mathematical addition or mere mechanical errors in the addition of votes, and does not involve the opening of ballot boxes or the examination or appreciation of ballots. While Sec. 7, Rule 27, Comelec Rules of Procedure, provides that the petition for correction may be filed at any time before proclamation, there is nothing to suggest that it cannot be applied to cases like the one at bar in which the validity of the proclamation is precisely in question [*Castromayor v. Comelec*, *supra*.].

8. *Ututalum v. Comelec*, 181 SCRA 335. The padding of the Registry List of Voters of a municipality is not a listed ground for a pre-proclamation controversy.

9. *Lazatin v. Comelec*, 157 SCRA 337. Because the petitioner had already been proclaimed (on orders of the Comelec), had taken his oath and had assumed his duties as Member, House of Representatives, the issue of invalidity of his proclamation and irregularities connected therewith, is a matter properly addressed to the House of Representatives Electoral Tribunal (which is the sole judge of all contests relating to election, returns and qualifications of Members of the House of Representatives). See also *Aquino v. Comelec*, *supra*., where it was held that assumption of jurisdiction by the House of Representatives Electoral Tribunal (HRET) takes place only after the winning candidate has been duly proclaimed and has taken the oath of office, because it is only then that he is said to be a member of the House of Representatives.

10. *Darantinao v. Comelec* (June, 1989). The Comelec has the power to inquire whether the members of the Board of Canvassers are qualified or not, and whether or not an election had been held in a precinct, in order to determine the integrity of the election returns.

11. *Alangdeo v. Comelec* (June 1989). The filing with the Comelec of a petition to annul or to suspend proclamation shall suspend the running of the period to file an election protest.

12. *Casimiro v. Comelec*, 171 SCRA 468. The affidavits of the watcher and the petitioner (alleging duress, fraud, coercion or intimidation attendant to preparation of election returns) are self-serving.

13. *Mayor v. Comelec* (January 1989). After the proclaimed winner had assumed office, the proper remedy is an election protest, not a pre-proclamation controversy.

XII. ELECTION CONTESTS

A. Jurisdiction over Election Contests.

1. Original and exclusive.

- a) President/ice President.... Supreme Court
- b) SenatorSenate Electoral Tribunal
- c) Representative..... HR Electoral Tribunal
- d) Regional/Provincial/City.... COMELEC
- e) Municipal..... RTC
- f) Barangay.....Municipal/Metropolitan Trial Court

2. Appellate Jurisdiction.

a) From decisions of the RTC and Municipal/City Courts, appeal shall be made exclusively to the Comelec, whose decision shall be final, executory and unappealable.

i) Election Contests for Municipal Offices. All election contests involving municipal offices filed with the Regional Trial Court shall be decided expeditiously. The decision may be appealed to the Commission within five days from promulgation or receipt of a copy thereof by the aggrieved party. The Commission shall decide the appeal within 60 days after it is submitted for decision, but not later than 6 months after the filing of the appeal, which decision shall be final, unappealable and executory [Sec. 22, R.A. 7166]. A motion for the reconsideration of the RTC decision is a prohibited pleading, and does not interrupt the running of the 5-day period for appeal [*Veloria v. Comelec*, 211 SCRA 907], But the Comelec cannot deprive the RTC of its competence to order execution of its decision pending appeal, this being a judicial prerogative and there being no law disauthorizing the same; besides, the Comelec rules would deprive the prevailing party of a substantial right to move for such relief [*Garcia v. de Jesus*, 206 SCRA 779; *Malaluan v. Comelec*, 254 SCRA 397].

ii) In the exercise of its exclusive appellate jurisdiction, the Comelec has the power to issue writs of prohibition, mandamus or certiorari, because the last paragraph of Sec. 50, B.R 697, is still in full force and effect, and has not been repealed nor amended by B.R 881 [*Relampagos v. Cumba*, 243 SCRA 502]. This abandons the ruling in *Veloria* and in *Garcia*.

iii) The provision of R.A. 6679 granting appellate jurisdiction to Regional Trial Courts over decisions of Municipal Courts in electoral cases

involving elective barangay officials is unconstitutional [*Flores v. Comelec*, 184 SCRA 484]. But in the absence of any express provision in the governing law, it is the Regional Trial Court, a court of general jurisdiction, which has jurisdiction over controversies involving election of members of the Sangguniang Kabataan [*Mercado v. Board of Election Supervisors*, G.R. No. 1097.13, April 6, 1995].

iv) The fact that decisions, final orders or rulings of the Comelec in appealed cases involving elective municipal and barangay officials are final, executory and unappealable does not preclude a recourse to the Supreme Court by way of a special civil action for certiorari [*Galido v. Comelec*, 193 SCRA 78]. But this recourse is available only when the Comelec's factual determination is marred by grave abuse of discretion [*Alvarez v. Comelec*, G.R. No. 142527, March 1, 2001].

b) From decisions of the Comelec, appeal shall be made through a Petition for Review by Certiorari under Rule 65 of the Rules of Court, to be filed with the Supreme Court within thirty (30) days from receipt of a copy of the decision, on the ground of grave abuse of discretion tantamount to lack or excess of jurisdiction or violation of due process. See *Aratuc v. Comelec*, 88 SCRA 251.

. c) From a decision of the Electoral Tribunal, appeal shall be through a Petition for Review to be filed with the Supreme Court, on the ground of grave abuse of discretion tantamount to lack or excess of jurisdiction, or a violation of due process. See *Robles v. HR Electoral Tribunal*, 181 SCRA 780.

i) In *Puzon v. HRET* (February, 1989), the Supreme Court declared that review of a decision of the Electoral Tribunal is possible only in the exercise of supervisory or extraordinary jurisdiction, and only upon showing that the Tribunal's error results from a whimsical, capricious, unwarranted, arbitrary or despotic exercise of power.

ii) In *Lazatin v. HRET*, 168 SCRA 391, the Supreme Court said that for purposes of election contests cognizable by the Electoral Tribunal, the HRET rules of procedure shall prevail over the provisions of the Omnibus Election Code.

iii) In *Abbas v. Senate Electoral Tribunal*, 166 SCRA 651, the Senators-members of the Senate Electoral Tribunal cannot be disqualified from hearing the case, as the mass disqualification would leave the tribunal no alternative but to abandon a duty that no other court or body can perform. This does not preclude the possibility of a Senator-member inhibiting himself

from sitting in judgment on a case before said tribunal, as his conscience may dictate.

3. *Actions which may be filed:*

- a) Election Protest.
- b) Quo Warranto

B. Election Protest.

1. *Requisites:*

a) Must be filed by any candidate who has filed a certificate of candidacy and has been voted upon for the same office. Thus, in *Tan v. Comelec* (June 1898), it was held that the Gubernatorial candidate is not the proper party to institute election protest regarding the election of the Vice Governor, Board members and Municipal Mayors.

b) On grounds of fraud, terrorism, irregularities or illegal acts committed before, during or after the casting and counting of votes.

i) The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is the true and lawful choice of the electorate. The proceeding may be instituted on the theory that the election returns, which are deemed *prima facie* to be the true reports of how the electorate voted on election day and which serve as the basis for the proclamation of the winning candidate, do not accurately reflect the true will of the voters due to alleged irregularities that attended the counting of the ballots. In a protest prosecuted on such a theory, the protestant ordinarily prays that the official count as reflected in the election returns be set aside in favor of a revision and recount of the ballots, the results of which should be made to prevail over those reflected in the returns pursuant to the doctrine that "*in an election contest where what is involved is the number of votes of each candidate, the best and the most conclusive evidence are the ballots themselves*". However, the superior status of the ballots as evidence of how the electorate voted presupposes that these were the very same ballots actually cast and counted in the elections. Thus, it has been held that before the ballots found in a box can be used to set aside the returns, the court (or the Comelec, as the case may be) must be sure that it has before it the same ballots deposited by the voters [*Rosal v. Comelec*, G.R. No. 168253, March 16, 2007].

ia) Thus, in this case, the Court laid down the following guidelines: [a] the ballots cannot be used to overturn the official count as reflected in the

election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution; [b] the burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant; [c] where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end; [d] it is only when the protestant has shown substantial compliance with the provisions of law on the preservation of the ballots that the burden of proving actual tampering or the likelihood thereof shifts to the protestee; and [e] only if it appears to the satisfaction of the court or Comelec that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.

ii) In *Arao v. Comelec*, 210 SCRA 290, it was held that the failure of the protestant to raise the question of identical handwriting or of impugning the validity of the ballots on that ground does not preclude the Comelec from rejecting the ballots. Unlike an ordinary suit, an election protest is of utmost public concern. The rights of the contending parties must yield to the far greater interest of the citizens in upholding the sanctity of the ballot. Thus, the Comelec simply cannot close its eyes to the illegality of the ballots, even if the protestant omitted to raise the ground in his protest. In *Erni v. Comelec*, 243 SCRA 706, the Court upheld the authority of the Comelec to determine whether ballots had been written by two or more persons, or in groups written by only one hand, without need of calling for the services of handwriting experts, this investigation being more in the nature of an internal process.

iii) An order regarding the revision of ballots is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of the case [*Bulaong v. Comelec*, 220 SCRA 745].

iv) As a general rule, the filing of an election protest or quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to an abandonment of one earlier filed [*Laodeno v. Comelec*, 276 SCRA 706], thus depriving the Comelec of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason for this is that once the competent tribunal has acquired jurisdiction over an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority [*Villamor v. Comelec*, G.R. No. 169865, July 21, 2006].

iva) This rule, however, admits of the following exceptions: [a] The Board of Canvassers was improperly constituted; [b] Quo warranto is not the proper remedy; [c] What was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; [d] The filing of an election contest was expressly made without prejudice to the preproclamation controversy, or was made *ad cautelam*; or [e] The proclamation was null and void [*Samad v. Comelec*, G.R. No. 107854, July 16, 1993; reiterated in *Dumayas, Jr. v. Comelec*, G.R. No. 141952-53, April 20, 2001]. If the proclamation is void, the pre-proclamation case is not rendered moot and academic [*Ramirez v. Comelec*, 270 SCRA 590],

ivb) But in *Tan v. Comelec*, G.R. Nos. 166143-47, November 20, 2006, the Supreme Court said that there is no law or rule prohibiting the simultaneous prosecution or adjudication of pre-proclamation controversies and election protests. Allowing the simultaneous prosecution scenario may be explained by the fact that pre-proclamation controversies and election protests differ in terms of the issues involved and the evidence admissible in each case, and the objective each seeks to achieve. [NOTE: As these cases involve elective provincial offices, the Comelec has original exclusive jurisdiction over both pre-proclamation controversies and election contests. Obviously, there can be no conflict of authority, and thus the cases can be simultaneously prosecuted before, and adjudicated by, the same tribunal.]

v) The entry of a general denial in an election case does not amount to an admission of the material allegations in the protest [*Loyola v. HRET*, G.R. No. 109026, January 4, 1994].

vi) Where the private respondent failed to commence the revision of the ballots in the counter-protested precincts, stubbornly maintaining that said ballots should be revised only if it is shown after the revision (of the ballots in the protested precincts) that the petitioner leads private respondent, the latter must be deemed to have abandoned or waived his counter-protest [*Abeja v. Judge Tazada*, G.R. NO. 112283, August 30, 1994].

vii) In *Miriam Defensor Santiago v. Fidel Valdez Ramos*, 253 SCRA 599, it was held that the election protest filed by Santiago against President Ramos was rendered moot and academic by the election of Santiago as a Senator in the May 1995 elections and her assumption of office as such on June 30, 1995. In assuming the office of Senator, the Protestant has effectively abandoned or withdrawn this protest, or at the very least, in the language of *Moraleja v. Relova*, abandoned her "determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate". Moreover, the dismissal of this protest would serve public interest as it would

dissipate the aura of uncertainty as to the results of the 1992 presidential election, thereby enhancing the all too crucial political stability of the nation during this period of national recovery.

viii) Where the Comelec had, in previous cases, ruled that the venue for the revision of ballots shall be in Manila, it is grave abuse of discretion for the Comelec to deny petitioner's request for the revision of ballots to be held in Manila on the pretext that there is not enough storage space to contain the ballot boxes; such inconsistent action tends to denigrate public trust in the objectivity and dependability of the Comelec [*Cabagnot v. Comelec*, 260 SCRA 503].

ix) Where the omissions are merely administrative lapses, e.g., absence of the chairman's signature on the voter' affidavits, list of voters or voting records, the absence or excess of detachable coupons, or discrepancy in the number of detachable coupons and the number of ballots, it was error for the HRET to nullify the election results in the absence of a clear showing of fraud. The voters should not be penalized for something not of their own making [*Arroyo v. HRET*, 246 SCRA 384],

c) Within ten (101 days from proclamation of the results of the election.

i) The period for filing an election protest is suspended during the pendency of a pre-proclamation controversy [*Gatchalian v. Comelec*, 245 SCRA 208; *Manahan v. Bernardo*, G.R. No. 125752, December 22, 1997].

ii) Where, after five days from the proclamation of the winning candidate, the loser files a motion for reconsideration in the pre-proclamation controversy, there are only five days which remain of the period within which to file an election protest [*Roquero v. Comelec*, 289 SCRA 150],

iii) The Comelec may not entertain a counter-protest filed beyond the reglementary period to file the same [*Kho v. Comelec*, G.R. No. 124033, September 25, 1997],

iv) A petition or protest contesting the election of a barangay official should be decided by the municipal or metropolitan trial court within 15 days from filing thereof, because an election case, unlike ordinary actions, involves public interest [*Bolalin v. Judge Occiano*, A.M. No. MTJ-96-1104, February 14, 1997].²

2. *Payment of Docket Fee.* A protestant has to pay a docket fee of P300 and an additional docket fee if there is a claim for damages. For failure

the basic docket fee, the protest should be dismissed [*Gatchalian v. Comelec*, 245 SCRA 208; *Soller v. Comelec*, 339 SCRA 685],

a) While it is true that the court acquires jurisdiction over a case only upon complete payment of the prescribed fees, the rule admits of exceptions, as when the party never raised the issue of jurisdiction of the trial court [*Tijam v. Sibonghanoy, supra*]. In *Villagracia v. Comelec*, G.R. No. 168296, January 31, 2006, in an election protest involving barangay elective office, the petitioner raised the issue that the court had no jurisdiction because of the failure of the other party to pay the correct filing fees for the first time on appeal before the Comelec. The Supreme Court held that the petitioner participated in the proceedings and voluntarily submitted to the jurisdiction of the trial court. It was only after the trial court issued its decision adverse to him that the petitioner raised the issue of jurisdiction, for the first time on appeal with the Comelec.

3. *Certificate of Absence of Forum Shopping.* The requirement under Supreme Court Circular No. 04-94 applies to election cases [*Loyola v. Court of Appeals*, 245 SCRA 477; *Tomarong v. Lubguban*, 269 SCRA 624],

4. *Death of Protestant.* The death of the protestant does not extinguish an election protest. In *De Castro v. Comelec*, 267 SCRA 806, it was held that an election protest is imbued with public interest which raises it onto a plane over and above ordinary civil actions, because it involves not only the adjudication of the private interest of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. In this case, it was held that the Vice Mayor-elect has the status of a real party in interest in the continuation of the proceedings. See also *Lomugdang v. Comelec*, 21 SCRA 402.

a) In *Poe v. Gloria Macapagal-Arroyo*, PET Case No. 002, March 29, 2005, the Supreme Court said that if persons not real parties in the action could be allowed to intervene, proceedings will be unnecessarily complicated, expensive and interminable — and this is not the policy of the law. Inasmuch as no real parties such as the vice-presidential aspirants in the 2004 elections have come forward to intervene, or to be substituted for the deceased protestant, it is far more prudent to abide by the existing and strict limitations on intervention and substitution under the law and the rules.

C. Quo Warranto.

1. Requisites:

a) Filed by any registered voter in the constituency.

- b) On grounds of ineligibility or disloyalty to the Republic of the Philippines.
- c) Within ten (10) days from proclamation of the results of the election.

2. Cases;

a) In *Sampayan v. Daza*, 213 SCRA 807, the petition for prohibition filed with the Supreme Court by residents of Northern Samar against Congressman Daza for the latter being allegedly a green card holder and a permanent resident of the U.S., was dismissed on the following grounds: [i] the case has become moot and academic, because Daza's term was to end June 30, 1992; [ii] the Supreme Court is without jurisdiction, the House of Representatives Electoral Tribunal being the proper forum, as the latter is the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives; and [iii] as a *de facto* officer, Daza cannot be made to reimburse funds disbursed during his term of office, because his acts are valid.

b) In *Frivaldo v. Comelec*, 174 SCRA 245, the Court held that considering that the copy of Frivaldo's certificate of naturalization in the U.S. was obtained only in September, 1988, the petition for disqualification may still be considered as having been seasonably filed even if filed more than seven months from the proclamation. Relate this to *Loong v. Comelec*, 216 SCRA 760.

c) In *Marquez v. Comelec*, G.R. No. 112889, April 18, 1995, the Supreme Court held that Art. 73 of the Rules Implementing the Local Government Code (particularly Sec. 40, R.A. 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 and undue circumscription of the law. The term "fugitives from justice" includes "not only those who flee after conviction to avoid punishment, but likewise those who, after being charged, flee to avoid prosecution". Thus, in *Rodriguez v. Comelec*, G.R. No. 120099, July 24, 1996, the Supreme Court ruled that Rodriguez cannot be considered a "fugitive from justice", because his arrival in the Philippines from the U.S. preceded the filing of the felony charges and the issuance of the warrant for his arrest by the Los Angeles Court by at least five months.

D. Distinctions between Quo Warranto in elective and in appointive office.¹

1. In an elective office: the issue is eligibility of the officer-elect; the court or tribunal cannot declare the protestant (or the candidate who

the second highest number of votes) as having been elected. See *Labo v. Comelec*, 176 SCRA 1; *Abella v. Comelec*, 201 SCRA 253; *Ortega v. Comelec*, 211 SCRA 297; *Sunga v. Comelec*, 288 SCRA 76..

a) Thus, in *Ocampo v. House of Representatives Electoral Tribunal*, G.R. No. 158466, June 15, 2004, after the HRET had declared Mark Crespo (Mark Jimenez) "ineligible for the Office of Representative of the 6th district of Manila for lack of residence in the district", and Pablo Ocampo, the second placer, moved that he be declared the winner, the Supreme Court said that there must be a final judgment (of disqualification) before the election in order that the votes of the disqualified candidate can be considered "stray". The obvious rationale is that in voting for a candidate who has not been disqualified by final judgment during election day, the people voted for him *bona fide*, without any intention to misapply their franchise, and in the honest belief that the candidate was then qualified to be the person to whom they would entrust the exercise of the powers of government. Thus, to proclaim the second placer would be anathema to the most basic precepts of republicanism and democracy enshrined in our Constitution. It would, in effect, be advocating a massive disenfranchisement of the majority of the voters of the 6th district of Manila.

2. In an appointive office: the issue is the legality of the appointment; the court determines who of the parties has legal title to the office.

D. *Execution pending appeal*. The trial court may grant a motion for execution pending appeal, because the mere filing of an appeal does not divest the trial court of its jurisdiction over a case and to resolve pending incidents. Since the court had jurisdiction to act on the motion (for execution pending appeal) at the time it was filed, that jurisdiction continued until the matter was resolved, and was not lost by the subsequent action of the opposing party [*Edding v. Comelec*, 246 SCRA 502],

1. The rationale why such execution is allowed in election cases, as stated in *Gahol v. Riodique*, G.R. No. L-40415, June 27, 1975, is "to give as much recognition to the worth of the trial judge's decision as that which is initially ascribed by 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" [*Uy v. Comelec*, cited in *Santos v. Comelec*, G.R. No. 155618, March 26, 2003].²

2. In *Navarosa v. Comelec*, G.R. No. 157957, September 18, 2003, it was held that the Regional Trial Court may grant a motion for execution

appeal when there are valid and special reasons to grant the same, such as (a) the public interest involved or the will of the electorate; (b) the shortness of the remaining portion of the term; or (c) the length of time that the election contest has been pending. Earlier, in *Gutierrez v. Comelec*, 270 SCRA 413, and in *Ramas v. Comelec*, 286 SCRA 189, the Supreme Court ruled that the fact that only a short period is left of the term of office is a good ground for execution pending appeal.

3. However, the rule must be strictly construed against the movant, and only when the reason is of such urgency will such execution pending appeal be allowed, as it is an exception to the general rule. Following civil law jurisprudence, the reasons allowing for immediate execution must be of such urgency as to outweigh the injury or damage of the losing party should such party secure a reversal of the judgment on appeal. Absent such, the order must be stricken down as flawed with grave abuse of discretion. Not every invocation of public interest with particular reference to the will of the electorate may be appreciated as a good reason, especially so if the same appears to be self-serving and has not been clearly established. Public interest will be best served only when the candidates voted for the position are finally proclaimed and adjudged winner in the election [*Camlan v. Comelec*, G.R. No. 124169 April 18, 1997].

4. The motion for execution pending appeal must be filed before the expiration of the period for appeal [*Relampagos v. Cumba*, 243 SCRA 690]. In *Asmala v. Comelec*, 289 SCRA 746, the Supreme Court said that the parties had five days from service of judgment within which to appeal, and although the respondent had filed his appeal on time, the appeal was deemed perfected as to him only. This did not deprive the petitioner of the right to avail himself of the five-day period to appeal, if he so desired. Accordingly, during this five-day period, the petitioner may file a motion for execution pending appeal. This ruling was reiterated in *Zacate v. Comelec*, G.R. No. 144678, March 1, 2001.

F. Award of Damages. Award of Damages. Actual or compensatory damages may be granted in all election contests or in quo warranto proceedings in accordance with law [Sec. 259, B.P. 881],

1. It was the intent of the legislators to do away with the provisions indemnifying the victorious party for expenses incurred in the election contest, in the absence of a wrongful act or omission clearly attributable to the losing party [*Atienza v. Comelec*, G.R. No. 108533, December 20, 1994].²

2. When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor

the term of which has already expired, the appeal is dismissible on that ground, unless a decision on the merits would be of practical value. In the case at bench, the petition appears to be moot and academic because the parties are contesting an election post to which their right to the office no longer exists; however, the question as to damages remains ripe for adjudication [*Malaluan v. Comelec*, 254 SCRA 397]. But the award of damages was reversed by the Supreme Court, saying that the criterion for a justifiable award of election protest expenses and salaries and emoluments remains to be the existence of pertinent breach of obligations arising from contracts or quasi-contracts, tortious acts or crimes or a specific legal provision authorizing the money claim in the context of election cases. If any damage had been suffered by private respondent due to the execution of judgment pending appeal, that damage may be said to be equivalent to *damnum absque injuria*.

G. *Interpretation of certain words and phrases.* See *Javier v. Comelec*, 144 SCRA 194.

1. Contest: any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute.
2. Election, returns and qualifications: in its totality, refers to all matters affecting the validity of the contestee's title to the position.
3. Election: refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes.
4. Returns: shall include the canvass of the returns and the proclamation of the winners, together with questions concerning the composition of the Board of Canvassers and the authenticity of elections returns.⁵
5. Qualifications: matters which could be raised in a Quo Warranto proceeding against the proclaimed winner, such as his disloyalty to the Republic, or his ineligibility or the inadequacy of his certificate of candidacy.

XIII. ELECTION OFFENSES

A. *Enumeration of election offenses.* Read Sec. 261, BP 881.

1. *Some prohibited acts:*

a) Vote-buying and vote-selling. In *People v. Ferrer*, 54 O.G. 1348, it was held that distribution of cigarettes to people who attended a political meeting falls within the context of the prohibition.

b) Wagering upon the result of the election. Any money or thing of value put up as a bet or wager shall be forfeited to the Government.

c) Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion.

d) Appointment of new employee (except in case of urgent need, with notice given to the Comelec within three days from the appointment), creation of new positions, promotion, or granting salary increases.

e) Carrying of deadly weapon within a radius of 100 meters from precinct. In *Mappala v. Judge Nunez*, 240 SCRA 600, it was held that it is not necessary that the deadly weapon be seized from the accused while he was in the precinct or within a radius of 100 meters therefrom; it is enough that the accused carried a deadly weapon within the prohibited radius during any of the days and hours specified in the law.

f) Transfer or detail of government official/employee without Comelec approval. In *People v. Reyes*, 247 SCRA 328, it was held that the transfer or detail of a government officer or employee will not be penalized by Sec. 261 (h), B.P. 881, if done to promote efficiency in the government service. To prove violation, two elements must concur, viz: (i) The fact of transfer or detail within the election period as fixed by the Comelec; and (ii) The transfer or detail was made without prior approval of the Comelec, in accordance with its implementing rules and regulations. In this case, the transfer was effected one day before the Comelec issued Resolution No. 2333, which prescribed the rules and regulations on how to obtain Comelec approval for such transfers.²

2. *Good faith is not a defense.* Election offenses are generally *mala prohibita*. Proof of criminal intent is not necessary. Good faith, ignorance or lack of malice is not a defense; the commission of the prohibited act is sufficient. See *People v. Bayona*, 61 Phil 181; *People v. Fuentes*, 181 Phil 186.

B. Jurisdiction over election offenses.

1. *Investigation and prosecution.* The Commission on Elections has exclusive jurisdiction to investigate and prosecute cases involving violations of election laws [Sec. 2(6), Art. IX-C, Constitution; *De Jesus v. People*, 120 SCRA 760; *Corpus v. Tanodbayan*, 149 SCRA 281]; but it may validly delegate the power to the Provincial Prosecutor, as it did when it promulgated Resolution No. 1862, dated March 2, 1987 [*People v. Judge Basilia*, 179 SCRA 87],

a) But it is not the duty of the Comelec, as investigator and prosecutor, to gather proof in support of a complaint filed before it [*Kilosbayan v. Comelec*, G. R. No. 128054, October 16, 1997],

2. *Trial and decision.* The Regional Trial Court has exclusive original jurisdiction to try and decide any criminal actions or proceedings for violation of election laws. The metropolitan or municipal trial court, by way of exception, exercises jurisdiction only over offenses relating to failure to register or to vote. It is the special intention of the Omnibus Election Code to vest in the regional trial court jurisdiction over election offenses as a matter of exception to the general provisions on jurisdiction over criminal cases found under B.P 129, as amended (even by R.A. 7691) [*Naldoza v. Lavilles*, 254 SCRA 286]. This ruling is reiterated in *Comelec v. Noynay*, 292 SCRA 254, calling attention to Sec. 268, BP 881.

C. Preferential disposition of election offenses [Sec. 269, B.P. 881],

1. Investigation and prosecution of election offenses shall be given priority by the Comelec. The investigating officer shall resolve the case within five (5) days from submission.

2. The courts shall likewise give preference to election offenses over all other cases, except petitions for a writ of habeas corpus. Cases shall be decided within thirty (30) days from submission.

D. Prescription period for election offenses. Five (5) years from date of commission.

LOCAL GOVERNMENT

I. GENERAL PRINCIPLES

A. Principles of Local Autonomy

1. Constitutional Provisions:

a) Sec. 25, Art. II: The State shall ensure the autonomy of local governments.

b) Sec. 2, Art. X: The territorial and political subdivisions shall enjoy local autonomy.

2. *The principle of local autonomy* under the 1987 Constitution simply means "decentralization"; it does not make the local governments sovereign within the state or an "*imperium in imperio*" [*Basco v. Pagcor*, 197 SCRA 52],

a) In *Limbonas v. Mangelin*, 170 SCRA 786, relative to the establishment of the autonomous regional governments in Regions IX and XII under the 1973 Constitution, the Supreme Court declared: "Autonomy is either decentralization of administration or decentralization of power". The second is abdication by the national government of political power in favor of the local government; the first consists merely in the delegation of administrative powers to broaden the base of governmental power. Against the first there can be no valid constitutional challenge.

b) In *Lina v. Pano, G.R. No. 129093, August 30, 2001*, the Supreme Court said that the 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, 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. True, there are some notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (Sec. 5, Art. X), which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of local government units, which cannot defy its will or modify or violate it. *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.³

3. However, even as we recognize that the Constitution guarantees autonomy to local government units, the exercise of local autonomy

subject to the power of control by Congress, and the power of general supervision by the President [*Judge Dadole v. Commission on Audit, G.R. No. 125350, December 3, 2002*],

a) The President can only interfere in the affairs and activities of a local government unit if he or she finds that the latter had acted contrary to law. This is the scope of the President's supervisory powers over local government units. Hence, the President or any of his alter egos, cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive, therefore, by the President or any of his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity, because it violates the principle of local autonomy, as well as the doctrine of separation of powers of the executive and the legislative departments in governing municipal corporations [*Judge Dadole v. Commission on Audit, supra.*].

b) Like local government units, the Liga ng mga Barangay is not subject to control by the Chief Executive or his alter ego. As the entity exercising supervision over the Liga, the DILG's authority is limited to seeing to it that the rules are followed; it cannot lay down such rules itself, nor does it have the discretion to modify or replace them. In this case, the most that the DILG could do was to review the acts of the incumbent officers of the Liga in the conduct of the elections to determine if there was a violation of the Liga's Constitution and By-laws and its implementing rules. If the National Liga Board violated the rules, the DILG should have ordered the Liga to conduct another election in accordance with the Liga's rules, not in obeisance to DILG-dictated guidelines. Neither does the DILG have the authority to remove the incumbent officers of the Liga and replace them, even temporarily, with unelected Liga officers [*Liga ng mga Barangay v. Judge Paredes, G.R. No. 130775, September 29, 2004*].

B. Corporation.

1. *Defined.* An artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

2. *Classification of corporations according to purpose.*

- a) Public: Organized for the government of a portion of the State.
- b) Private: Formed for some private purpose, benefit, aim or end.
- c) Quasi-public: A private corporation that renders public service or supplies public wants.

3. *Criterion to determine whether corporation is public:* The relationship of the corporation to the State, i.e., if created by the State as its own agency to help the State in carrying out its governmental functions, then it is public; otherwise, it is private.

4. *Classes of public corporations:*

- a) Quasi-corporation. Created by the State for a narrow or limited purpose.
- b) Municipal corporation. A body politic and corporate constituted by the incorporation of the inhabitants for the purpose of local government.

C. Municipal Corporations.

1. *Elements:*

- a) Legal creation or incorporation. The law creating or authorizing the creation or incorporation of a municipal corporation.
- b) Corporate name. The name by which the corporation shall be known.
 - i) The sangguniang panlalawigan may, in consultation with the Philippine Historical Institute, change the name of component cities and municipalities, upon the recommendation of the sanggunian concerned; provided that the same shall be effective only upon ratification in a plebiscite conducted for the purpose in the political unit directly affected [Sec. 13, R.A. 7160].
 - c) Inhabitants. The people residing in the territory of the corporation.
 - d) Territory. The land mass where the inhabitants reside, together with the internal and external waters, and the air space above the land and waters.

2. *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 [Sec. 15, R.A. 7160]. Accordingly, it has dual functions, namely:

- a) Public or governmental. It acts as an agent of the State for the government of the territory and the inhabitants.

b) 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].

3. *Municipal corporations in the Philippines; Roles:* 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 [Sec. 1, Art. X, *Constitution*],

a) Province. The province, composed of a cluster of municipalities, or 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 [Sec. 459, R.A. 7160],

b) 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 [Sec. 448, R.A. 7160].

c) Municipality. The municipality, consisting of a group of barangays, serves primarily as a general purpose government for the coordination and delivery of basic, regular and direct services and effective governance of the inhabitants within its jurisdiction [Sec. 440, R.A. 7160],

d) Barangay. As the basic political unit, the barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community, and as a forum wherein the collective views of the people may be expressed, crystallized and considered, and where disputes may be amicably settled [Sec. 384, R.A. 7160].

e) Autonomous regions in Muslim Mindanao and in the Cordilleras [Sec. 1, Art. X, *Constitution*]. In *Limbonas v. Mangelin*, *supra*., relative to the establishment of the autonomous regional governments in Regions IX and XII under the 1973 Constitution, it was held that autonomy is either decentralization of administration or decentralization of power. The second is abdication by the national government of political power in favor of the local government; the first consists merely in the delegation of administrative powers to broaden the base of governmental power. The regional governments in Regions IX and XII are of the first variety. In *Datu Firdausi Abbas v. Comelec*, 179 SCRA 287, RA 6734, the organic act establishing the Autonomous Regional Government of Muslim Mindanao was held valid. It was passed pursuant to the mandate

in Art. X, Constitution. In *Cordillera Broad Coalition v. Commission on Audit*, 181 SCRA 495, Executive Order No. 220, issued by President Aquino in the exercise of legislative powers, creating the Cordillera Administrative Region [CAR] was held valid. It prepared the groundwork for autonomy and the adoption of the organic law. In *Ordillo v. Comelec*, 192 SCRA 100, the sole province of Ifugao which, in the plebiscite, alone voted in favor of RA 6766, cannot validly constitute the Autonomous Region of the Cordilleras.

f) Special metropolitan political subdivisions. Pursuant to Sec. 11, Art. X, Constitution, Congress may, by law, create special metropolitan political subdivisions subject to a plebiscite set forth in Sec. 10, (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 be created shall be limited to basic services requiring coordination.

D. Creation and 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 sangguniang 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 [Sec. 6, R.A. 7160],

a) In Section 19, R.A. 9054, Congress delegated to the Autonomous Region in Muslim Mindanao (ARMM) the power to create provinces, cities, municipalities and barangays within the ARMM. Challenged as unconstitutional in *Serna v. Comelec*, G.R. No. 177597, July 16, 2008, the Supreme Court said: There is no provision in the Constitution that conflicts with the delegation to regional legislative bodies of the power to create municipalities and barangays, provided Section 10, Article X of the Constitution is followed. However, the creation of provinces and cities is another matter. Section 5 (3), Article VI of the Constitution provides that each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative. Section 3 of the Ordinance appended to the Constitution provides that any province that may hereafter be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member (in the House of Representatives). Pursuant to these provisions, a province cannot be created without creating a legislative district; nor can a city with a population of 250,000 or more be created without a legislative district. Thus, the power to create a province

or a city with a population of 250,000 or more requires the power to create a legislative district. Accordingly, the delegation granted by Congress to the ARMM to create provinces and cities is unconstitutional, *because Congress cannot validly delegate the power to create legislative districts for the House of Representatives, since the power to increase the allowable membership in the House of Representatives and to reapportion legislative districts, is vested exclusively in Congress.*

2. Requisites/Limitations on creation or conversion.

a) Sec. 10. Art. X. Constitution: No province, city, municipality or barangay may be created, divided, merged, abolished, or 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.

i) Plebiscite requirement: No creation, division, 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 effectiveness of the law or ordinance effecting such action, unless said law or ordinance fixes another date [*Sec. 10, R.A. 7160*].

ia) In *Tan v. Comelec*, 142 SCRA 727, 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, x x x BP 885, creating the Province of Negros del Norte, is declared unconstitutional because it excluded the voters of the mother province from participating in the plebiscite (and it did not comply with the area criterion prescribed in the Local Government Code), x x x Where the law authorizing the holding of a plebiscite is unconstitutional, the Court cannot authorize the holding of a new one. x x x The fact that the plebiscite which the petition sought to stop had already been held and officials of the new province appointed does not make the petition moot and academic, as the petition raises an issue of constitutional dimension, x x x

ib) *Padilla v. Comelec*, 214 SCRA 735, reiterates *Tan v. Comelec*, and rejects the proposition that the 1987 Constitution has revived the ruling in *Paredes v. Executive Secretary*. Thus, even under the 1987 Constitution, the plebiscite shall include all the voters of the mother province or the mother municipality.

ic) In *Grino v. Comelec*, 213 SCRA 672, it was held that the ballots in the plebiscite for the conversion of the sub-province of Guimaras into a province should have contained spaces to allow voting for Governor, Vice Governor and members of the Sangguniang Panlalawigan of Iloilo (in the event of rejection by the voters of the proposed conversion). However, since the great majority of the votes turned out to be in favor of converting Guimaras into a province, the petition was dismissed for being moot and academic.

id) In *Lopez v. Comelec*, 136 SCRA 633, the Supreme Court held that the creation of Metropolitan Manila is valid. The referendum of February 27, 1975 authorized the President to restructure local governments in the four cities and 13 municipalities, x x x The President had authority to issue decrees in 1975. x x x The 1984 amendments to the 1973 Constitution impliedly recognized the existence of Metropolitan Manila by providing representation of Metro Manila in the Batasan Pambansa.

b) Sec. 7. R.A. 7160: Based on verifiable indicators of viability and projected capacity to provide services, to wit:

i) 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 its 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:

- ia) Municipality: P2,500,000.00
- ib) City: P100,000,000.00 (*Yr. 2000 constant prices, amended by R.A. 9009*)
- ic) Highly urbanized city: P50,000,000.00
- id) Province : P20,000,000.00

In *Alvarez v. Guingona*, 252 SCRA 695, 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.

ii) Population. It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned. Required minimum population for:

- iia) 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]

- iib) Municipality: 25,000
- iic) City : 150,000
- iid) Highly urbanized city: 200,000
- iie) Province: 250,000

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iii) 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. Area requirements are:

- iiia) Municipality: 50 square kilometers
- iiib) City : 100 square kilometers
- iiic) Province: 2,000 square kilometers

Compliance with the foregoing indicators shall be attested to by the Department of Finance, the National Statistics Office and the Lands Management Bureau of the Department of Environment and Natural Resources. In *Mariano v. Comelec*, 242 SCRA 211, the Supreme Court 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 tool 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. [NOTE: R.A. 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.]

c) Other constitutional limitations, e.g., provisions of the Bill of Rights affording protection to rights, property and contracts of inhabitants.³⁴

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 [Sec. 14, R.A. 7160].

4. *Division and merger, abolition of local government units.*

a) Division and merger. Shall comply with the 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 [Sec. 8, R.A. 7160].

b) 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 [Sec. 9, R.A. 7160].

5. *De facto municipal corporations.* See *Malabang v. Benito*, 27 SCRA 533. Requisites:

- a) Valid law authorizing incorporation.
- b) Attempt in good faith to organize under it.
- c) Colorable compliance with the law.
- d) Assumption of corporate powers.

In *Pelaez v. Auditor General*, 15 SCRA 569, the Supreme Court declared as unconstitutional Sec. 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. •

6. *Attack against invalidity of incorporation.* No collateral attack shall lie; an 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, supra*]. But this rule applies only when the municipal corporation is, at least, a *de facto* municipal corporation.

a) However, where the challenge was made nearly thirty years after the executive order creating the municipality was issued [*Municipality of San Narciso, Quezon v. Mendez*, 239 SCRA 11], or where the municipality has been in existence for all of 16 years before the ruling in *Pelaez v. Auditor General* was promulgated [*Municipality of Candihay, Bohol v. Court of Appeals*, 251 SCRA 530], and various governmental acts throughout the years all indicate the State's recognition and acknowledgment of the existence of the municipal corporation, then the municipal corporation should be considered as a regular, *de jure* municipality. The same conclusion was reached in *Municipality of*

Jimenez, Misamis Occidental v. Borja, 265 SCRA 182, where the Supreme Court said that the Municipality of Sinacaban had been in existence for 16 years when *Pelaez v. Auditor General* was decided; that the State and even the Municipality of Jimenez itself had recognized Sinacaban's corporate existence (by entering into an agreement concerning common boundaries); and that Sinacaban had attained *de jure* status by virtue of the Ordinance appended to the 1987 Constitution apportioning legislative districts throughout the country which considered Sinacaban as part of the 2nd district of Misamis Occidental.

E. The Local Government Code [R.A. 7160],

1. *Effectivity.* January 1, 1992, unless otherwise provided herein, after its complete publication in at least one newspaper of general circulation [*Sec. 536, R.A. 7160*.']

2. *Scope of 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 [*Sec. 4, R.A. 7160*.]

3. *Declaration of Policy [Sec. 2, R.A. 7160],*

a) 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;

b) Ensure accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum; and

c) 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.

4. *Operative Principles of Decentralization.* Read Sec. 3, R. A. 7160.

5. *Rules of Interpretation:*

a) Any provision on a power of a 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.

b) 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.

c) 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.

d) 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.

e) 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.

II. GENERAL POWERS AND ATTRIBUTES OF LOCAL GOVERNMENT UNITS

A. *Powers in general.*

1. *Sources:*

- a) Sec. 25, Art. II; Secs. 5, 6 & 7, Art. X, Philippine Constitution
- b) Statutes, e.g., R. A. 7160
- c) Charter [particularly of cities]
- d) Doctrine of the right of self-government, but applies only in States which adhere to the doctrine.

2. *Classification:*

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- a) express, implied, inherent (powers necessary and proper for governance, e.g., to promote health and safety, enhance prosperity, improve morals of inhabitants)
- b) public or governmental, private or proprietary
- c) intramural, extramural
- d) mandatory, directory: ministerial, discretionary

3. *Execution of powers.*

- a) Where statute prescribes the manner of exercise, the procedure must be followed.
- b) Where the statute is silent, local government units have discretion to select reasonable means and methods of exercise.

B. *Governmental Powers,*

1. *General Welfare [Sec. 16, R.A. 7160]:* 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 the general welfare. Within their respective territorial jurisdictions, 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.

a) The general welfare clause is the statutory grant of police power to local government units.

b) Limitations on the exercise of powers under this clause:

i) Exercisable only within territorial limits of the local government unit, except for protection of water supply.

ii) Equal protection clause. (The interests of the public in general, as distinguished from those of a particular class, require the exercise of the power.)

iii) Due process clause. (The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals.)

iv) 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. In *Magtajas v. Pryce Properties*, G.R. No. 111097, July 20, 1994, the Supreme Court reiterated its ruling in *Tatel v. Municipality of Virac, Catanduanes*, 207 SCRA 157, and in *Solicitor General v. Metropolitan Manila Authority*, 204 SCRA 837, that 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 may regulate trade; [e] must not be unreasonable; and [f] must be general in application and consistent with public policy.

iva) Thus, in *Tayaban v. People*, G.R. No. 150194, March 6, 2007, the Supreme Court upheld the conviction by the Sandiganbayan of Mayor Tayaban, et al., for acting in evident bad faith, wilfully and unlawfully passing Resolution No. 20, vesting upon themselves the power and authority to demolish the half-finished Tinoc Public Market construction to the damage and prejudice of the government, particularly the Cordillera Executive Board, owner of the project. The Court rejected the petitioners' contention that the subject demolition was a valid exercise of the police power.

vb) Likewise, in *Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006, it was held that the Sangguniang Bayan resolution ordering the closure or the transfer of petitioner's gasoline station was not a valid exercise

of the police power. The Court found that there was a failure by the municipal officials to comply with the due process clause.

c) *Other Cases:*

i) 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, G.R. No. 150763, July 2, 2004*].

ii) However, a local government unit may not regulate the subscriber rates charged by CATV operators within its territorial jurisdiction. More than two decades ago, the national government, through the National Telecommunications Commission (NTC), assumed regulatory powers over the CATV industry. This was reinforced by PD 1512, EO 546 and EO 205. This is also clear from President Fidel V. Ramos' E0436, mandating that 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. Court of Appeals, G.R. No. 138810, September 29, 2004*].

iii) In *Tano v. Socrates, G.R. No. 119249, August 21, 1997*, the Supreme Court 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 City from January 1, 1993 to January 1, 1998", as well as the Sangguniang Panlalawigan Resolution "prohibiting the catching, gathering, possessing, buying, selling and shipment of live marine coral dwelling of aquatic organisms for a period of five years, coming from Palawan waters".

iv) In *Magtajas*, 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 P.D. 1869 (Charter of PAGCOR) which has the character and force of a statute.

v) What Congress delegated to the City of Manila in R.A. 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-alai, would not amount to something meaningful unless the

holder of the license or permit was also franchised by the National Government to so operate. Therefore, Manila Ordinance No. 7065, which purported to grant Associated Development Corporation (ADC) a franchise to conduct jai-alai operations, is void and *ultra vires* [*Lim v. Pacquing*, 240 SCRA 649].

va) Sec. 244 (b) (3) (iv and v), R.A. 7160 (Local Government Code), 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*, G.R. No. 118533, October 4, 1995]. But it 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 R.A. 4850, RD. 813 and E.O. 927, because although R.A. 7160 vests in municipalities the authority to grant fishery privileges in municipal waters, R.A. 7160 did not repeal the charter of LLDA, and the latter is an exercise of the police power [*Laguna Lake Development Authority v. Court of Appeals*, 251 SCRA 42].

vi) In *Binay v. Domingo*, 201 SCRA 508, it was held that the power of municipal corporations is broad and has been said to be commensurate with but not 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, x x x Ordinance is not unconstitutional merely because it incidentally benefits a limited number of persons x x x The support for the poor has long been an accepted exercise of the police power in the promotion of the common good.

vii) In *Villacorta v. Bernardo*, 143 SCRA 480, a Dagupan City ordinance requiring all proposed subdivision plans to be passed upon by the City Engineer, and imposing a service fee of P0.30 per square meter on every resultant lot was declared invalid, *ultra vires*, as it effectively amends a general law.

viii) In *Terrado v. Court of Appeals*, 131 SCRA 373, the ordinance of Bayambang, Pangasinan, appointing Lacuesta manager of fisheries for 25 years, renewable for another 25 years, was held invalid. Municipality cannot grant exclusive fishing privileges without prior public bidding and for a period of more than five years. Violates Fisheries Law.

ix) In *Matalin Coconut v. Municipal Council of Malabang, Lanao del Sur*, 143 SCRA 404, 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.

x) In *Physical Therapy Organization of the Philippines v. Municipal Board of Manila*, 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.

xi) *Philippine Game fowl Commission v. Intermediate Appellate Court*, 146 SCRA 294, reiterated in *Deang v. Intermediate Appellate Court*, is authority for the rule that the power to issue permits to operate cockpits is vested in the Mayor, in line with the policy of local autonomy.

xii) In *De la Cruz v. Paras*, 123 SCRA 569, the Bocaue, Bulacan ordinance prohibiting the operation of night-clubs, was declared invalid, because of its prohibitory, not merely regulatory, character.

xiii) In *Quezon City v. Erricta*, 122 SCRA 759, 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.

xiv) In *Velasco v. Villegas*, 120 SCRA 568, 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.

xv) *Ortigas v. Feati Bank*, 94 SCRA 533, reiterated in *Sangalang v. Gaston*, G.R. No. 71169, December 22, 1988, held that a zoning ordinance reclassifying residential into commercial or light industrial area is a valid exercise of the police power.

xvi) In *Balacuit v. CFU of Agusan del Norte*, 163 SCRA 182, it was held that the ordinance penalizing persons charging full payment for admission of children (ages 7 to 12) in moviehouses was an invalid exercise of the police power for being unreasonable and oppressive on business of petitioners.

xvii) In *Sangalang i/. Intermediate Appellate Court*, 176 SCRA 719, the act of the Municipal Mayor in opening Jupiter and Orbit Sts., Bel-Air Subdivision, to the public was deemed a valid exercise of the police power.²

2. *Basic services and facilities [Sec. 17, R.A. 7160].* [a] Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently

also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code [within six 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.

a) Read the enumeration of basic services and facilities in Sec. 17.

i) In *Albon v. Fernando*, G.R. No. 148357, June 30, 2006, the Court reiterated the principle that subdivision streets belong to the owner of the subdivision until donated to the government or until expropriated upon payment of just compensation [*White Plains Association v. Court of Appeals*, 297 SCRA 547]. The use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Sec. 335, R.A. 7160. This finds support in the language of Sec. 17, R.A. 7160, which mandates LGUs to efficiently and effectively provide basic services and facilities.

ii) 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.

b) 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 from 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.³

3. Power to Generate and Apply Resources [Sec. 18, R.A. 7160],

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 any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their

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 or 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.

a) This provision restates and implements Secs. 5, 6 & 7, Art. X, Constitution. But this power is always subject to the limitations which Congress may provide by law [*Basco v. Pagcor, 197 SCRA 52*]. Thus, it was held that local government units have no power to tax instrumentalities of the National Government, such as PAGCOR.

b) Detailed provisions are found in Secs. 128 to 383, Book II, R. A. 7160 [Local Taxation and Fiscal Matters].

c) Fundamental principles governing the exercise of the taxing and other revenue-raising powers of local government units [Sec. 130, R.A. 7160].

i) Taxation shall be uniform in each local government unit;

ii) 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;

iii) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;

iv) 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

v) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

d) Cases:

i) *Philippine Petroleum Corporation v. Municipality of Pililla, Rizal, 198 SCRA 82*: 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.

ii) *Basco v. Pagcor, 197 SCRA 52*: 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, x x x The power of local governments to impose taxes and fees is always subject to limitations which Congress may provide by law x x x Local governments have no power to tax instrumentalities of the National Government; PAGCOR being an instrumentality of the National Government is therefore exempt from local taxes.

iii) *Estanislao v. Costales*, 196 SCRA 853: Local government units have the power to create their own sources of revenue, levy taxes, etc., but subject to such guidelines and limitations set by Congress.

iv) Sec. 187, R.A. 7160, which authorizes the Secretary of Justice to review the constitutionality or 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*, G.R. No. 112497, August 4, 1994],

v) The City of Cebu, as a local government unit, has the power to collect real property taxes from the Mactan Cebu International Airport Authority [*Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, September 11, 1996]. There is no question that under R.A. 6958, MCIAA is exempt from 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.

e) Fundamental principles governing the financial affairs, transactions and operations of local government units [Sec. 305, R.A. 7160]:ⁱ⁾

i) No money shall be paid out of the local treasury except in pursuance of an appropriation ordinance or law;

ii) Local government funds and monies shall be spent solely for public purposes;

iii) Local revenue is generated only from sources expressly authorized by law or ordinance, and collection thereof shall at all times be acknowledged properly;

iv) 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;

- v) 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;
- vi) 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;
- vii) Local governments shall formulate sound financial plans, and the local budgets shall be based on functions, activities, and projects, in terms of expected results;
- viii) 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;
- ix) Local budgets shall operationalize approved local development plans;
- x) Local government units shall ensure that their respective budgets incorporate the requirements of their component units and provide for equitable allocation of resources among these component units;
- xi) National planning shall be based, on local planning to ensure that the needs and aspirations of the people as articulated by the local government units in their respective local development plans are considered in the formulation of budgets of national line agencies or offices;
- xii) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units; and
- xiii) The local government unit shall endeavor to have a balanced budget in each fiscal year of operation.⁴

4. *Eminent Domain [Sec. 19, R.A. 7160].* A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the 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 local government unit may immediately take possession of the property upon the filing of the 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.

- a) For the constitutional limitations on the exercise of the power of eminent domain, see FUNDAMENTAL POWERS OF THE STATE CONSTITUTIONAL LAW.
- b) The additional limitations on the exercise of the power of eminent domain by local government units are, as follows:
 - i) Exercised only by the local chief executive, acting pursuant to a valid ordinance;
 - ii) For public use or purpose or welfare, for the benefit of the poor and the landless;
 - iii) Only after a valid and definite offer had been made to, and not accepted by, the owner.
- c) In *Moday v. Court of Appeals*, 243 SCRA 152, it was held that the Sanggunian 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.
- d) However, in *Municipality of Paranaque v. V. M. Realty Corporation*, 292 SCRA 676, the Supreme Court said that there was lack of compliance with Sec. 19, LGC, where the Municipal Mayor filed a complaint for the expropriation of two parcels of land on the strength of a resolution passed by the Sanggunian Bayan, because what is required by the law is an ordinance. There are basic differences between an ordinance and a resolution, viz: an ordinance is a law while a resolution is merely a declaration of sentiment or opinion of a lawmaking body on a specific matter; a third reading is needed for an ordinance, not for a resolution unless decided otherwise by a majority of the members of the Sanggunian.
- e) On socialized housing, see *Filstream International Inc. v. Court of Appeals*, 284 SCRA 716, and *City of Mandaluyong v. Francisco*, G.R. No. 137152, January 29, 2001, as well as the appropriate provisions of R.A. 7279 (Urban Development and Housing Act of 1992). See the Chapter on FUNDAMENTAL POWERS OF THE STATE, supra..

5. *Reclassification of lands [Sec. 20, R.A. 7160].*

- a) 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:

- i) When the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture, or
 - ii) 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:

[a] for highly urbanized cities and independent component cities: 15%, [b] for component cities and 1st to 3rd class municipalities: 10%, and [c] for 4th to 6th class municipalities: 5%; provided that agricultural land distributed to land reform beneficiaries shall not be affected by such reclassification.

b) The Comprehensive Land Use Plans and accompanying ordinances of the local Sanggunian should be the primary reference in the application for reclassification of lands in the city or municipality. While the DAR retains the responsibility for approving or disapproving applications for land use conversion filed by individual landowners of their landholdings, the exercise of such authority should be confined to compliance with the requirements and limitations under existing laws and regulations such as the allowable percentage of agricultural area to be reclassified, ensuring sufficient food production, areas non-negotiable for conversion and those falling under environmentally critical areas or highly restricted for conversion under the law. Definitely, the DAR's power in such cases may not be exercised in such a manner as to defeat the very purpose of the LGU concerned in reclassifying certain areas to achieve social and economic benefits in pursuit of its mandate towards the general welfare. Precisely, therefore, the DAR is required to use the comprehensive land use plans and accompanying ordinances of the local Sanggunian as primary reference in evaluating applications for land use conversion filed by individual landowners *[Department of Agrarian Reform v. Saranggani Agricultural Co., Inc., G.R. No. 160554, January 24, 2007]*.

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6. *Closure and Opening of Roads [Sec. 21, R.A. 7160]*. 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.

a) Additional limitations in case of permanent closure:

i) Adequate provision for the maintenance of public safety must be made;

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ii) 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.

b) Temporary closure may be made during an actual emergency, fiesta celebrations, public rallies, etc.

c) Cases:

i) *Pilapil v. Court of Appeals*, 216 SCRA 33: a municipality has the authority to prepare and adopt a land use map, promulgate a zoning ordinance, and close any municipal road.

ii) *Macasiano v. Diokno*, 212 SCRA 464: 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 Art. 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.]

iii) *Cabrera v. Court of Appeals*, 195 SCRA 314: 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.

iv) *Cebu Oxygen & Acetylene Co. v. Berciles*, 66 SCRA 481: The power to vacate is discretionary on the Sanggunian x x x 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.

v) *Favis v. City of Baguio*, 29 SCRA 456: The City Council has the authority to determine whether or not a certain street is still necessary for public use.

vi) *Cruz v. Court of Appeals*, 153 SCRA 142: 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 [Secs. 48-59, R.A. 7160].* Exercised by the local sanggunian.

a) Products of legislative action:

- i) *Ordinance* - prescribes a permanent rule of conduct.
- ii) *Resolution* - of temporary character, or expresses sentiment.

b) Requisites for validity. In *Solicitor General v. Metropolitan Manila Authority, supra.*, reiterated in *Tatel v. Municipality of Virac, supra.*, and in *Magtajas v. Pryce Properties, supra.*, the Supreme Court enumerated the requisites, as follows: i) must not contravene the Constitution and any statute; ii) must not be unfair or oppressive; iii) must not be partial or discriminatory; iv) must not prohibit, but may regulate trade; v) must not be unreasonable; and vi) 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:

i) If the local chief executive approves the same, affixing his signature on each and every page thereof.

ii) 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.

iia) The Local Government Code imposes upon the City Mayor the duty to "enforce all laws and ordinances relative to the governance of the city". As chief executive of the city, he has the duty to enforce an ordinance as long as it has not been repealed by the Sanggunian or annulled by the courts. He has no choice; it is his ministerial duty to do so [*Social Justice Society v. Mayor Atienza, G.R. No. 156052, March 7, 2007*].

iib) In *De los Reyes v. Sandiganbayan*, G.R. No. 121215, November 13, 1997, where petitioner was charged with falsification of a public

comment for approving a resolution which purportedly appropriated 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 Supreme Court disagreed, saying that the grant of the veto power accords the Mayor the discretion whether or not to approve the resolution.

[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 Sangauniana Panlalawiaan. *Procedure:* Within 3 days after approval, the secretary of the sangguniang panlungsod (in component cities) or sangguniang bayan shall forward to the sangguniang panlalawigan for review copies of approved ordinances and resolutions approving the local development plans and public investment programs formulated by the local development councils. The sangguniang panlalawigan shall review the same within 30 days; if it finds that the ordinance or resolution is beyond the power conferred upon the sangguniang panlungsod or sangguniang 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 consistent with law, and therefore, 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 sangguniang concerned shall, within 30 days from receipt thereof, return the same with its comments and 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 the ordinances with penal sanctions 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 addition to being posted, be published once in a local newspaper of general circulation within the city; if there is no such newspaper within the city, then publication shall be made in any newspaper of general circulation.

8. *Authority over Police Units*: as may be provided by law. [See: Sec. 6, Art. XVI, Constitution; Philippine National Police Act.]

C. *Corporate Powers* [Sec. 22, R.A. 7160], 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:

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 authority of the Sanggunian, except when the City Councilors, by themselves and as representatives of or on behalf of the City, bring the action to prevent unlawful disbursement of City funds [*City Council of Cebu v. Cuizon*, 47 SCRA 325],

a) 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 a 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 who declined to handle the case in court [*Municipality of Pililla, Rizal v. Court of Appeals*, 233 SCRA 484]. This is reiterated in *Ramos v. Court of Appeals*, 269 SCRA 34, where it was held that only the Provincial Fiscal, the Provincial Attorney, or the Municipal Attorney may validly represent the municipality. The legality of the representation of an unauthorized counsel may be raised at any

stage of the proceedings. However, the Municipal Attorney may validly adopt the work already performed in good faith by a private lawyer, provided that no injustice is committed against the adverse party and that no compensation has been paid to the private counsel.

3. *To have and use a corporate seal.* Local government units may continue using, modify or change their corporate seal; any change shall be registered with the Department of Interior and Local Government.

4. *To acquire and convey real or personal property.*

a) The local government unit may acquire real or personal, 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. See *City of Naga v. Court of Appeals* (1989).

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 the municipality and, thus, is governmental or public property [*Salas v. Jarencio*, 48 SCRA 734; *Rebuco v. Villegas*, 55 SCRA 656].

d) Town plazas are properties of public dominion; they may be occupied temporarily, but only for the duration of an emergency [*Espiritu v. Municipal Council of Pozorrubio (Pangasinan)* 102 Phil. 866].

e) A public plaza is beyond the commerce of man, and cannot be the subject of 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]. See also *Macasiano v. Diokno*, *supra*., where the closure of 4 streets in Baclaran (Paranaque) was held invalid for non-compliance with MMA Ordinance No. 2, and because provincial roads and city streets are property for public use under Art. 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.

g) PD 957, as amended by PD 1216, mandates that open spaces in a subdivision shall be donated to the local government unit where the subdivision

is situated. The decree does not prohibit the imposition of conditions on the donation provided that the conditions are not contrary to law, morals, good customs, public order or public policy, although it prohibits any construction to be made on the minimum area required for an open space in a subdivision. In this case, however, considering that the area donated is less than the area required to be allocated for open space, there is no excess area on which to construct the sports complex demanded by the subdivision owner as a condition for the donation. Thus, the condition for the donation is contrary to law and should be deemed as not imposed. But the donation cannot be revoked for failure to comply with the condition, otherwise, the subdivision owner would be able to evade its obligation to donate the open space [*City of Angeles v. Court of Appeals*, 261 SCRA 90].

h) Procurement of supplies is made through competitive public bidding [P.D. 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.

5. *Power to enter into contracts.*

a) Requisites of a valid municipal contract:

i) The local government unit has the express, implied or inherent power to enter into the particular contract.

ii) The contract is entered into 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.

iii) 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.

iv) The contract must comply with the formal requirements of written contracts, e.g., the Statute of Frauds.

b) *Ultra vires* contracts. When a contract is entered into without compliance with the first and the third 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.

i) However, in *Quezon City v. Lexber, Inc.*, G.R. No. 141616, March 15, 2001, it was held that PD 1445 does not provide that the absence of an appropriation ordinance ipso fact makes a contract 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 no 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 from entering into contracts for the public welfare unless and until there is a prior authority from the city council.

c) *Other cases:*

i) *Manantan v. Municipality of Luna (La Union)*, 82 Phil. 844. 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 granting the privilege to another. (Unless the subsequent resolution is a police measure, because the exercise of police power prevails over the non-impairment clause.)

ii) In *Mallari v. Also*, G.R. No. 150866, March 6, 2006, the Court held that the City Mayor has the authority to sign, on behalf of the City, a Lease Contract over market stalls, and the contract is not invalidated by the failure of the mayor to appear before the notary public.

iii) *Ortigas v. FeatiBank*, 94 SCRA 533; *Sangalang v. Intermediate Appellate Court*, 176 SCRA 719. A municipal zoning ordinance, as a police measure, prevails over the non-impairment clause.

iv) *City of Manila v. Intermediate Appellate Court*, 179 SCRA 428. Breach of contractual obligations by the City of Manila renders the City liable in damages. The principle of *respondeat superior* applies.

d) Authority to negotiate and secure grants [Sec. 23, R.A. 7160], 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 under Sec. 17, from local and foreign assistance agencies without necessity of securing clearance or approval from any 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.*

III. MUNICIPAL LIABILITY

A. *Rule:* Local government units and their officials are not exempt from liability for death or injury to persons or damage to property [Sec. 24, R.A. 7160],

1. *Specific provisions of law making local government units liable:*

a) *Art. 2189, Civil Code:* The local government unit is liable in damages for death or injuries suffered by reason of the defective condition of roads, streets, bridges, public buildings and other public works. Cases:

i) *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.

ii) *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.

iii) *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.

b) *Art. 2180 (6th par.), Civil Code:* The State is responsible when it acts through a special agent. See *Merritt v. Government of the Philippine Islands*, 34 Phil 311. See also *Municipality of San Fernando, La Union v. Judge Firme*, 195 SCRA 692.

c) *Art. 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.
²

2. *Liability for Tort.* Despite the clear language of Sec. 24, R.A. 7160, that local government units and their officials are not exempt from 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

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:

a) If the local government unit is engaged in governmental functions, it is not liable.

i) In *Palafox v. Province of Ilocos Norte*, 102 Phil 1186,, as well as in *Palma v. Garciano*, it was held that the prosecution of crimes is a governmental function, and thus, the local government unit may not be held liable therefor.

ii) In *Municipality of San Fernando (La Union) v. Firme*, 195 SCRA 692, the municipality was not held liable for torts committed by a regular employee, even if the dump truck used belonged to the municipality, inasmuch as the employee was discharging governmental (public works) functions.

b) If engaged in proprietary functions, local government unit is liable.
Cases:

i) *Mendoza v. de Leon*, 33 Phil. 508. 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.

ii) *Torio v. Fontanilla*, 85 SCRA 599. 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.]

iii) *City of Manila v. Intermediate Appellate Court*, *supra*.. The operation of a public cemetery is a proprietary function of the City of Manila. The City is liable for the tortious acts of its employees, under the principle of *respondeat superior*.

iv) *Liability for illegal dismissal of an employee*. In *Municipality of Jasaan, Misamis Oriental v. Gentallan*, G.R. No. 154961, May 9, 2005, 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 from the time of her illegal dismissal up to her reinstatement) resulting from the 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. In *Enciso v. Remo*, 29 SCRA 580, the Municipality was held liable for the payment of back wages of employees illegally separated from the service. In *Laganapan v. Asedillo*, 154 SCRA 377, the Municipality of Kalayaan, Laguna, was also held liable — and not the Mayor alone — for the back salaries of the illegally dismissed Chief of Police, because the Municipal Council abolished the appropriation item for salary of the Chief of Police after the petitioner was dismissed from the service.

v) *Local officials may also be held personally liable.* In *City of Angeles v. Court of Appeals*, 261 SCRA 90, where the city officials ordered the construction of a drug rehabilitation center on the open space donated by the subdivision owner in violation of PD 1216, the cost of the demolition of the drug rehabilitation center should be borne by the city 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. In *Rama v. Court of Appeals*, 148 SCRA 496, the Provincial Governor and the members of the Provincial Board were held liable in damages in their personal capacity arising from the illegal act of dismissing employees in bad faith. Said the Supreme Court: "x x x Where they act maliciously and wantonly and injure individuals rather than discharge a public duty, they are personally liable". In *Correa v. CFI of 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. In *Salcedo v. Court of Appeals*, 81 SCRA 408, the Mayor, for his persistent defiance of the order of the Civil Service Commission to reinstate the employee, was held personally liable for the payment of back salaries. In *Pilar v. Sangguniang Bayan of Dasol, Pangasinan*, 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. In *Nemenzo v. Sabillano*, 25 SCRA 1, Mayor Sabillano was adjudged personally liable for payment of back salaries of a policeman who was illegally dismissed. According to the Supreme Court: "The Mayor cannot hide behind the mantle of his official capacity and pass the liability to the Municipality of which he is Mayor." In *San Luis v. Court of Appeals*, G.R. No. L-80160, June 26, 1989, Laguna Governor San Luis was held personally liable for moral damages for refusing to reinstate Berroya, quarry superintendent, despite the ruling of the Civil Service Commission as affirmed by the Office of the President.

3. *Liability for Violation of Law.* Cases:

a) *Abella v. Municipality of Naga*, 90 Phil. 385. Where the Municipality closed a part of a municipal street without indemnifying the person prejudiced thereby, the Municipality can be held liable for damages. .

b) *Racho v. Municipality of Ilagan, Isabela*. Lack of funds does not excuse the Municipality from paying the statutory minimum wage of P120.00 a month to its employees. The payment of the minimum wage is a mandatory statutory obligation of the Municipality.

c) *Moday v. Court of Appeals*, 243 SCRA 152. 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 Temporary Restraining Order issued by the Court.

4. *Liability for Contracts.*

a) Rule: A municipal corporation, like an ordinary person, is liable on a contract it enters into, provided that the contract is *intra vires*. [In *City of Manila v. Intermediate Appellate Court, supra.*, the City was held liable in damages for breach of contract, even if the contract does not contain a penalty clause.] If the contract is *ultra vires*, the municipal corporation is *not liable*.

b) 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.

c) Ordinarily, therefore, the doctrine of *estoppel* does not lie against the municipal corporation.

d) The *doctrine of implied municipal liability*: A municipality may become obligated upon an implied contract 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. Intermediate Appellate Court*, 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⁾

i) Thus, in this case, it was held that the Province of Cebu cannot set up the plea that the contract was *ultra vires* and still retain benefits thereunder, x x x 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.

ii) Does this ruling reverse *De Guia v. Auditor General*, 44 SCRA 169, where the Supreme Court held that the engagement of the services of Atty. de Guia by the Municipal Council of Mondragon, Northern Samar, was *ultra 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? 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) On the question of *estoppel*, *San Diego v. Municipality of Naujan, Oriental Mindoro*, G.R. No. L-9920, February 29, 1960, is authority for the rule that *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 thereunder. In *San Diego*, the Supreme Court rejected the doctrine of *estoppel*, because to apply the principle would enable the municipality to do indirectly what it cannot do directly.

iv) For further rulings on the hiring of private counsel, see *Municipality of Pililla, Rizal v. Court of Appeals*, 233 SCRA 484, where the Supreme Court said that 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 a 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 who declined to handle the case in court. This was reiterated in *Ramos v. Court of Appeals*, 269 SCRA 34, where it was held that only the Provincial Fiscal, the Provincial Attorney or the Municipal Attorney could validly represent the municipality. The legality of the representation of an unauthorized counsel may be raised at any stage of the proceedings. However, the Municipal Attorney may validly adopt the work already performed in good faith by the private lawyer, provided no injustice is committed against the adverse party and no compensation has been paid to the private counsel.

iva) 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. Court of Appeals*, G.R. No. 118605, April 12, 2000].

V. LOCAL OFFICIALS

A. Provisions applicable to elective and appointive local officials.

1. *Prohibited Business and Pecuniary Interest [Sec. 89, R.A. 7160]*: It shall be unlawful for any local government official or employee, directly or indirectly, to:

a) 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;

b) Hold such interests in any cockpit or other games licensed by the local government unit;

c) 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;

d) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and

e) Possess or use any public property of the local government unit for private purposes.

f) The prohibitions and inhibitions prescribed in R.A. 6713 also apply.

2. *Practice of Profession [Sec. 9C, R.A. 7160]*.

a) All governors, city and municipal mayors are prohibited from practising their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

b) Sanggunian members may practice their professions, 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 instrumental 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 local government unit 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.

i) In *Javellana v. Department of Interior & Local Government*, 212 SCRA 475, 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.

c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency, provided they do not derive monetary compensation therefrom.

i) In *Javellana*, the Supreme Court ruled that LGC and DILG Memorandum Circular No. 90-81 does not discriminate against lawyers and doctors: it applies to all provincial and municipal officials.

3. Prohibition against appointment [Sec. 94, R.A. 7160],

a) 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 government-owned or -controlled corporations or their subsidiaries. Relate this to Sec. 7, Art. IX-B of the Constitution. See *Flores v. Drilon*, *supra*.

b) Except for losing candidates in barangay elections, no candidate who 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 corporation or their subsidiaries. Relate this to Sec. 6, Art. IX-B, of the Constitution, which does not provide for an exception.

B. Elective Local Officials.

1. Qualifications! Disqualifications.

a) Qualifications [Sec. 39, R.A. 7160]: Citizen of the Philippines; a 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; a resident therein for at least one year immediately preceding the election; able to read and write Filipino or any other local language or dialect; and, on 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 sangguniang panlungsod of highly urbanized cities, 21 years of age [for mayor or vice mayor of independent component cities, component cities, or municipalities], 18 years of age [for member of the sangguniang panlungsod or sangguniang bayan, or punong barangay or member of the sangguniang barangay], or at least 15 but not more than 21 years of age [for candidates for the sangguniang kabataan].

i) The Local Government Code does not specify any particular date when the candidate must possess 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 on June 30, 1995, when his application for repatriation was granted by the Special Committee on Naturalization created under PD 825, he was therefore qualified to be proclaimed. Besides, Sec. 39 of the Local Government Code 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 *Altarejos v. Comelec*, G.R. No. 163256, November 10, 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 six 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, Masbate, the Court applied the ruling in *Frivaldo v. Comelec*, 257 SCRA 727, 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 Supreme Court 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],

b) Disqualifications [Sec. 40, R.A. 7160]: The following are disqualified from running for any elective local position: (i) 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; (ii) Those removed from office as a result of an administrative case; (iii) Those convicted by final judgment for violating the oath of allegiance to the Republic, (iv) Those with dual citizenship; (v) Fugitives from justice in criminal or non-political cases here or abroad; (vi) 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; and (vii) 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 B.P. 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 presentation [*Villaber v. Comelec*, G.R. No. 148326, November 15, 2001],

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ii) In *Marquez v. Comelec*, 243 SCRA 538, the Court held that Art. 73 of the Rules Implementing R.A. 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 and 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”. Thus, in *Rodriguez v. Comelec*, 259 SCRA 296, it was held that Rodriguez cannot be considered a “fugitive from justice”, because his arrival in the Philippines from the U.S. 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) Sec. 40, R.A. 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 (the date of effectivity of the Local Government Code) is not disqualified from running for elective local office [*Grego v. Comelec*, 274 SCRA 481]. In *Reyes v. Comelec*, 254 SCRA 514, the Supreme Court 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 refused to accept delivery of the copy of the decision.

iv) In *Mercado v. Manzano*, 307 SCRA 630, reiterated in *Valles v. Comelec*, G.R. No. 137000, August 9, 2000, the Supreme Court clarified the “dual citizenship” disqualification, and reconciled the same with Sec. 5,

Art. IV of the Constitution on "dual allegiance". Recognizing situations 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.

2. *Manner of Election [Sec. 41, R.A. 7160],*

a) 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.

b) 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 sangguniang panlalawigan concerned. The presidents of the liga ng mga barangay and the pederasyon ng mga sangguniang kabataan elected by their respective chapters, shall serve as *ex officio* members of the sangguniang panlalawigan, panlungsod or bayan.

c) 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 the 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.

3. *Date of election.* Every three years on the second Monday of May, unless otherwise provided by law.

4. *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 pn the second Monday of May, 1997 [R.A. 8524].

a) The three-term limit on a local official is to be understood to refer to terms for which the official concerned was elected. Thus, a person who

was elected Vice Mayor in 1988 and who, because of the death of the Mayor, became Mayor in 1989, may still be eligible to run for the position of Mayor in 1998, even if elected as such in 1992 and 1995 [*Borja v. Comelec*, G.R. No. 133495, September 3, 1998]. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office. He must also have been elected to the same position for the same number of times before the disqualification can apply [*Adormeo v. Commission on Elections*, G.R. No. 147927, February 4, 2002].

b) In *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002, the Supreme Court said that the constitutional and statutory provisions have two parts. The first part provides that an elective local official cannot serve for more than three consecutive terms. The second part states that voluntary renunciation of office for any length of time does not interrupt the continuity of service. The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form continuous service or consecutive terms. After three consecutive terms, an elective local official cannot seek immediate re-election for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any subsequent election, like a recall election, is no longer covered by the prohibition for two reasons. First a subsequent election like a recall election is no longer an immediate re-election after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service.

c) In *Rivera v. Comelec and Morales*, G.R. No. 167591, May 9, 2007, respondent Morales was elected and served as Mayor of Mabalacat, Pampanga, for the terms commencing July 1, 1995 to June 30, 1998, and July 1, 2001 to June 30, 2004. He served his second term from July 1, 1998 to June 30, 2001, but claims that he was merely a "de facto officer" or a "caretaker", because his proclamation was declared void by the Comelec, although the winning candidate never actually served as Mayor. At the time of the controversy, he was serving as Mayor, having been proclaimed as winning candidate in the election of May, 2004, for the term from July 1, 2004 to June 30, 2007. His election and proclamation was challenged, because this would constitute his "fourth consecutive term" as Mayor, in violation of the prohibition against serving for more than three consecutive terms.¹⁾

i) Reiterating *Latasa v. Comelec*, G.R. No. 154829, December 10, 2003, the Court said that the framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person

a particular territorial jurisdiction as a result of prolonged stay in the same office. Citing *Ong v. Alegre, G.R. Nos 163296 & 163354, January 23, 2006*, for the three-term limit for elective local government officials to apply, two conditions must concur: [a] the official concerned has been elected for three consecutive terms in the same local government post; and [b] he has served three consecutive terms.

ii) Applying these requisites in *Ong*, it was held that Morales should be disqualified as Mayor, because as of June 30, 2004, he had already served as Mayor for three consecutive terms. The fact that he was ousted as Mayor on his second term in the electoral protest filed by petitioner Dee does not constitute an interruption in serving the full term (from 1998-2001). He was proclaimed elected in 1998; he assumed the position; and he served as Mayor until June 30, 2001. He was Mayor for the entire period notwithstanding the decision of the RTC in the electoral case ousting him as Mayor. Whether as caretaker or as de facto officer, he exercised the powers and enjoyed the perquisites of the office.

5. Rules on succession [Secs. 44-46, R.A. 7160]:

a) Permanent vacancies: A permanent vacancy arises when an elective local official fills a 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:

i) Governor or mayor, the vice governor or vice-mayor concerned shall become the governor or mayor.

ii) Vice-Governor or vice mayor, the highest ranking sanggunian member or, in case of his 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.

iia) In *Victoria v. Comelec*, 229 SCRA 269, the Supreme Court rejected the contention that this provision be interpreted by factoring the number of voters who actually voted, because the law is clear and must be applied — and the courts may not speculate as to the probable intent of the legislature apart from the words used in the law.

iiib) 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.

iii) Punong barangay, the highest-ranking sanggunian barangay member, or in case of his permanent inability, the second highest ranking sanggunian barangay member. [Note: A tie between or among the highest ranking sanggunian members shall be resolved by drawing of lots.]

iv) Sanggunian member, where automatic successions 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 the sangguniang bayan; and by the city or municipal 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. 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.

iva) 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 Sanggunian 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 formerly held 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. Court of Appeals*, G.R. No. 141307, March 28, 2001].

ivb) 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 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 the vacancy to be filled was that of a member of the Sangguniang Bayan who did not belong to any political party, the Supreme Court 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 Sangguniang Bayan. Neither the respondent, because although he was recommended by the Sangguniang Bayan, he was not appointed by the Governor.

v) 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 Supreme Court pointed out that under the Local Government Code, 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, voluntarily 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 the causes enumerated in the Local Government Code. Thus, to avoid a hiatus in the office of the Chairman, the vacancy should be filled by the member of the Sangguniang Kabataan chosen by the incumbent SK members by simple majority from among themselves.

b) Temporary vacancies:

i) 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 from 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.]

ii) When the local chief executive is travelling within the country but outside his 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.]

6. *Compensation* [Sec. 81, R.A. 7061]. The compensation of local officials and personnel shall be determined by the sanggunian concerned, subject to the provisions of R. A. 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 P1,000 per month for the punong barangay and P600.00 for the sangguniang barangay members.

a) Elective local officials shall be entitled to the same leave privileges as those enjoyed by appointive local officials, including the cumulation and commutation thereof.

7. *Recall*. See: TERMINATION OF OFFICIAL RELATIONSHIP, LAW OF PUBLIC OFFICERS, supra..

8. *Resignation* [Sec. 82, R.A. 7160]. 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.]

9. *Grievance Procedure [Sec. 83, R.A. 7160]:* The local chief executive shall establish a procedure to inquire into, act upon, resolve or settle complaints and grievances presented by local government employees.

10. *Discipline [Secs. 60-68, R.A. 7160].*

a) Grounds for disciplinary action: An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

i) *Disloyalty to the Republic of the Philippines.*

ii) *Culpable violation of the Constitution.*

iii) *Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty.* In *Regidorv. Chiongbian*, 173 SCRA 507, 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.

iv) *Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor.*

v) *Abuse of authority.* In failing to share with the municipalities concerned the amount paid by the National 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].

vi) *Unauthorized absence for 15 consecutive working days, except in the case of members of the sangguniang panlalawigan, panlungsod, bayan and barangay.*

vii) *Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country.*

viii) *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.]

b) Complaints: A verified complaint against:

i) Provincial, highly urbanized city or independent component city elective official, shall be filed before the Office of the President.

ia) 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 suggests 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. Court of Appeals*, 200 SCRA 271].

ib) 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 investigate is based on the *alter ego* principle [*Joson v. Torres*, 290 SCRA 279].

ic) The respondent has the right to a formal investigation under Administrative Order No. 23, which includes the right to appear and defend himself in person or by counsel, the 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 petitioner's motion for a formal investigation and decided the case on the basis of position papers, the right of the petitioner was violated [*Joson v. Torres, supra*]. In *Salalima v. Guingona*, 257 SCRA 55, the Supreme Court said that the administrative investigation can proceed even during the pendency of an appeal of audit findings to the Commission on Audit.

ii) Elective municipal officials, shall be filed before the sangguniang panlalawigan, whose decision may be appealed to the Office of the President.

iia) Adm. 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 R.A. 7160, inasmuch as the repealing clause of R.A. 7160 did not expressly repeal the administrative order, and implied repeals are frowned upon [*Berces v. Executive Secretary*, 241 SCRA 539].

iib) The decision of the sangguniang panlalawigan in administrative cases involving elective local officials must 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].

iii) Elective barangay officials, shall be filed before the sangguniang panlungsod or sangguniang bayan concerned, whose decision shall be final and executory.

c) Preventive suspension may be imposed by the President, the governor, or the mayor [as the case may be] at any time 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.

i) When the petitioner failed to file his answer despite the many opportunities given to him, he was deemed to have waived his right to answer and to present evidence. At that point, the issues were deemed joined, and it was proper for the Executive Secretary to suspend him, inasmuch as the Secretary found that the evidence of guilt was strong and that continuance in office could influence the witnesses and pose a threat to the safety and integrity of the evidence against him [*Joson v. Torres, supra.*].

ii) The authority to preventively suspend is exercised concurrently by the Ombudsman, pursuant to R.A. 6770; the same law authorizes a preventive suspension of six months [*Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995], See also *Yabut v. Office of the Ombudsman*, 233 SCRA 310. The preventive suspension of an elective local official (in this case, the Mayor of San Fernando, Romblon) by the Sandiganbayan on a charge of violation of R.A. 3019, shall, likewise, be only for a period of 60 days, not 90 days, consistent with Sec. 63, R.A. 7160, which provides that "any single preventive suspension of local elective officials shall not extend beyond 60 days" [*Rios v. Sandiganbayan*, G.R. No. 129913, September 26, 1997].

iii) 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.

iv) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

d) Penalty: 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.

i) In *Publico v. Villapando*, G.R. No. 147870, July 31, 2002, it was held that by virtue of Sec. 60 of the Local Government Code, 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 from the service may be imposed upon an erring local elective official only by a court of law. The provisions of the Implementing Rules and Regulations granting the disciplining authority the power to remove an elective local official administratively are invalid.

ii) In *Sangguniang Barangay of Don Mariano Marcos v. Martinez*, G.R. No. 170626, March 3, 2008, petitioner filed with the Sangguniang Bayan of Bayombong, Nueva Vizcaya, administrative charges against respondent for dishonesty, misconduct in office and violation of the Anti-Graft Law, and the Sangguniang Bayan rendered a decision imposing upon Martinez the penalty of removal from office. It was held that the Sangguniang Bayan does not have the authority to remove elective local officials, it being clear from Sec. 60 of the Local Government Code that "an elective local official may be removed from office on the grounds enumerated above by order of the proper court". The Sangguniang Bayan acted beyond its jurisdiction when it ordered the removal of Martinez from office.

iii) Note that under Sec. 40 of the Local Government Code, the penalty of removal from office as a result of an administrative case shall be a bar to the candidacy of the respondent for any elective local office.

iv) In *Salalima v. Guingona*, 257 SCRA 55, the Supreme Court upheld the imposition of the administrative penalty of suspension of not more than 6 months for each offense, provided that the successive service of the sentence should not exceed the unexpired portion of the term of the petitioners. The suspension did not amount to removal from office.

e) Administrative Appeal. Decisions may, within 30 days from receipt thereof, be appealed to:ⁱ⁾

i) The sangguniang panlalawigan, in the case of decisions of component cities' sangguniang panlungsod and the sangguniang bayan;

■ ii) The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities. Decisions of the Office of the President shall be final and executory.

iia) Thus, in *Malinao v. Reyes*, 255 SCRA 616, the Supreme Court ruled that certiorari will not lie because there is still an 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.

iib) That there is appeal to the Office of the President is reiterated in *Mendoza v. Laxina*, G.R. No. 146875, July 14, 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 Secs. 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 and such other emoluments denied him during the pendency of the appeal.

f) Execution pendino 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 539, the Supreme Court pointed out that 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.

g) Effect of re-election. The re-election of a local official bars the continuation of the administrative case against him, inasmuch as the reelection of the official is tantamount to condonation by the people of whatever past misdeeds he may have committed [*Malinao v. Reyes*, 255 SCRA 616; *Salalima v. Guingona*, 257 SCRA 55].¹⁹

i) In *Lingating v. Commission on Elections*, G.R. No. 153475, November 13, 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 that administrative offense.

C. 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 laborers 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. Court of Appeals*, G.R. No. 131136, February 28, 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 the 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 Treasurer for Administration, because under Sec. 471 of the Local Government Code, it is the Secretary of Finance who has the power to appoint Assistant Provincial Treasurers from a list of recommendees of the Provincial Governor [*Dimaandal v. Commission on Audit*, 291 SCRA 322].

2. *Officials common to all Municipalities, Cities and Provinces [Secs. 469-490, R.A. 7160].*

- a) Secretary to the Sanggunian
- b) Treasurer
- ' c) Assessor
- d) Accountant
- e) Budget Officer ,
- f) Planning and Development Coordinator
- g) Engineer
- h) Health Officer
- i) Civil Registrar
- j) Administrator
- k) Legal Officer

- l) Agriculturist
- m) Social Welfare and Development Officer
- n) Environment and Natural Resources Officer
- o) Architect
- p) Information Officer
- q) Cooperatives Officer
- r) Population Officer
- s) Veterinarian
- t) General Services Officer

[Note: In the barangay, the mandated appointive 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.

i) Pursuant to this provision, the Supreme Court upheld the validity of the act of Governor Democrito Plaza preventively suspending respondents who were being investigated for administrative complaints lodged against them. The suspension is not unjustified; it is one of the sacrifices which holding a public office requires for the public good. To be entitled to back salaries, private respondents must not only be found innocent of the charges, but their suspension must likewise be unjustified [*Plaza v. Court of Appeals*, G.R. No. 138464, January 18, 2008],

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 Civil Service Commission which shall decide the appeal within 30 days from receipt thereof.

i) 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 the 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, G.R. No. 141149, July 5, 2002*].

V. INTERGOVERNMENTAL RELATIONS

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. *Coordination with national agencies.* 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 implementation of said national projects.
3. *Consultation.* No project or program shall be implemented by government authorities unless the consultations mentioned in Secs. 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 R. A. 6975, otherwise known as the "Department of Interior and Local Government Act of 1990".

C. Inter-Local Government Relations.

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.
 - a) 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 a municipal 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. See *Municipality of Pililla v. Court of Appeals*, 233 SCRA 484; *Ramos v. Court of Appeals*, 269 SCRA 34.

3. The city or municipality, through the city or municipal mayor, shall exercise general supervision over component barangays to ensure that said barangays act 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 the participating local units.

D. People's and Non-Governmental Organizations.

1. Local government units shall promote the establishment and operation of people's and nongovernmental 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 nongovernmental organizations to engage in the delivery of certain basic services, etc.³

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 nongovernmental 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 [Secs. 98-101]. In *Commission on Audit of the Province of Cebu v. Province of Cebu*, G.R. No. 141386, November 29, 2001, the Supreme Court 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 Secs. 100[c] and 272 of the Local Government.

2. The Local Health Board [Secs. 102-105]
3. The Local Development Council [Secs. 106-115]
4. The Local Peace and Order Council [Sec. 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 sangguniang bayan.
- b) Involving two or more municipalities in the same province: referred to the sangguniang panlalawigan.
 - i) By virtue of R.A. 7160, the *Sanggunian Panlalawigan* is vested with the function, not only to bring the contending parties together and intervening or assisting in the amicable settlement of the dispute, but with the original jurisdiction to hear and decide the case in accordance with the procedure laid down in the law and its implementing rules and regulations. The Regional Trial Court can decide the case only on appeal, should any party aggrieved by the decision of the Sanggunian elevate the same [*Municipality of Sta. Fe v. Municipality of Aritao, G.R. No. 140474, September 21, 2007*],
 - ii) In *Municipality of Jimenez v. Borja*, 265 SCRA 182, the Supreme Court declared that the Regional Trial Court was correct when it ordered a relocation survey to determine to which municipality the barangays belonged. The agreement between the municipalities of Jimenez and Sinacaban which was approved by the Sangguniang Panlalawigan is invalid as it would effectively amend Executive Order No. 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 the 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.

i) In *National Housing Authority v. Commission on the Settlement of Land Problems*, G.R. No. 142601, October 23, 2006, where, in a boundary dispute between the City of Caloocan and the Municipality of San Jose del Monte, a controversy over a housing area administered by the National Housing Authority arose, and the Municipality of San Jose del Monte filed a case against the NHA with the Commission on the Settlement of Land Problems (COSLAP), the Supreme Court said that COSLAP is without jurisdiction over the matter. The case should be referred to the *sangguniangs* of the municipality and the city concerned.

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 Regional Trial Court having jurisdiction over the area in dispute which shall decide the appeal within 1 year from the filing thereof.

a) Inasmuch as Sec. 118 of the Local Government Code does not provide for the office or agency vested with the jurisdiction over the settlement of boundary disputes between a municipality and an independent component city in the same province, under B.P. 129, as amended by R.A. 7691, it should be the Regional Trial Court in the province that can adjudicate the controversy. After all, the Regional Trial Court has general jurisdiction to adjudicate all controversies, except only those withheld from its plenary powers [*Municipality of Kananga v. Madrona*, G.R. No. 141375, April 30, 2003].⁴

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. Commission on Elections, supra*.].

VI. LOCAL INITIATIVE AND REFERENDUM

A. *Local Initiative.*

1. *Defined.* 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 voters of 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 [*Sec. 13, R.A. 6735*].

b) If no favorable action is taken by the sanggunian concerned within 30 days from presentation, the proponents, through their duly authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the sanggunian concerned.

c) The proposition shall be numbered serially, starting from Roman 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 representatives, and in the presence of a representative of the proponent and a representative of the sanggunian concerned in a public place in 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 sanggunian and local chief executive concerned.

3. *Limitations:*

a) 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.

b) On the sanggunian: Any proposition 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 3/4 of all its members. In case of barangays, the period shall be 18 months after the approval thereof.

B. Local Referendum.

1. *Defined.* The legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the sanggunian.²

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.

VII. LOCAL GOVERNMENT UNITS

A. The Barangay

1. Chief Officials and Offices.

a) There shall be in each barangay a punong barangay, seven (7) sangguniang barangay members, the sangguniang kabataan chairman, a barangay secretary and a barangay treasurer. There shall also be in every barangay a *lupong tagapamayapa*. The sangguniang barangay may form community brigades and create such other positions or offices as may be deemed necessary to carry out the purposes of the barangay government.

i) For purposes of the Revised Penal Code, the punong barangay, sangguniang barangay members, and members of the *lupong tagapamayapa* in each barangay shall be deemed as persons in authority in their jurisdiction, while other barangay officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment, and any barangay member who comes to the aid of persons in authority, shall be deemed agents of persons in authority. In *Milo v. Salanga*, 152 SCRA 113, the Barangay Chairman is a public officer who may be charged with arbitrary detention. In *People v. Monton* (1998), it was held that the Barangay Chairman is entitled to possess and carry firearms within the territorial jurisdiction of the barangay [Sec. 88(3), B.P. 337]. He may not, therefore, be prosecuted for illegal possession of firearms.²³

2. *The Barangay Assembly*. There shall be a Barangay Assembly composed of all persons who are actual residents of the barangay for at least 6 months, 15 years of age or over, citizens of the Philippines, and duly registered in the list of barangay assembly members. It shall meet at least twice a year to hear and discuss the semestral report of the sangguniang barangay concerning its activities and finances, as well as problems affecting the barangay.

Powers of the Barangay Assembly. Read Sec. 398, R.A. 7160.

3. *Katarungang Pambarangay*



a) Lupong Tagapamayapa. There is hereby created in each barangay a lupong tagapamayapa, composed of the punong barangay as chairman and 10 to 20 members. The lupon shall be constituted every 3

i) Powers of the Lupon: [a] Exercise administrative supervision over the conciliation panels; [b] Meet regularly once a month to provide a forum for exchange of ideas among its members and the public of matters relevant to the amicable settlement of disputes, and to enable various conciliation panel members to share with one another their observations and experiences in effecting speedy resolution of disputes; and [c] Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

b) Panakat no Tagapaakasundo. There shall be constituted for each dispute brought before the lupon a conciliation panel to be known as the *pangkat ng tagapagkasundo*, consisting of 3 members who shall be chosen by the parties to the dispute from the list of members of the lupon. Should the parties fail to agree on the pangkat membership, the same shall be determined by lots drawn by the lupon chairman.

c) Subject matter of amicable settlement; procedure; conciliation; arbitration; effects of settlement and arbitration award. Read Secs. 408-416, R. A. 7160.

4. Sangguniang Kabataan.

a) Creation: Composition: There shall be in every barangay a sangguniang kabataan to be composed of a chairman, seven members, a secretary and a treasurer. An official who, during his term of office, shall have passed the age of 21 shall be allowed to serve the remaining portion of the term for which he was elected.

i) Powers and Functions: Read Sec. 426, R. A. 7160.

b) Katipunan no Kabataan: Shall be composed of all citizens of the Philippines actually residing in the barangay for at least 6 months, who are 15 but not more than 21 years of age, who are duly registered in the list of the sangguniang kabataan or in the official barangay list in the custody of the barangay secretary. It shall meet once every 3 months, or at the call of the sanggunian kabataan chairman, or upon written petition of least 1/20 of its members.

c) Pederasyon no moa sanaauniana kabataan. There shall be an organization of all the pederasyon ng mga sangguniang kabataan:ⁱ⁾

- i) In municipalities, the pambayang pederasyon;
- ii) In cities, panlungsod na pederasyon;

- iii) In provinces, panlalawigang pederasyon;
- iv) In special metropolitan political subdivisions, pangmetropolitang pederasyon;
- v) On the national level, pambansang pederasyon.

B. The Municipality. Read Secs. 440-447, R.A. 7160.

C. The City. Read Secs. 448-458, R. A. 7160.

D. The Province. Read Secs. 459-468, R. A. 7160.

E. Leagues of Local Government Units/Officials.

1. *Liga ng mga Barangay.* Organization of all barangays 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. Read Secs. 491-495.

a) In *Viola v. Alunan*, G.R. No. 115844, August 15, 1997, the Supreme Court held that Sec. 493, R.A. 7160, which empowers the Liga to "create such other positions as may be deemed necessary", is valid, and does not constitute an irregular delegation of power.

b) In *Bito-onon v. Judge Nelia Yap Fernandez*, G.R. No. 139813, January 31, 2001, it was held that the DILG Secretary cannot, by issuing Circular No. 97-193, amend the rules and guidelines promulgated by the National Liga Board in connection with the election of officers of the Liga ng mga Barangay, Provincial Chapter of Palawan. The DILG Secretary exercises only the power of supervision over local government units, and this power entails merely seeing to it that subordinate officers perform their functions in accordance with law. The amendment of the rules and guidelines promulgated by the National Liga Board would, in effect, be an exercise of the power of control.

c) Neither has the DILG the authority to remove the incumbent officers of the Liga ng mga Barangay and to replace them, even temporarily, with unelected Liga officers [*Liga ng mga Barangay v. Judge Paredes*, G.R. No. 130775, September 27, 2004].²

2. *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. Read Secs. 496-498.

3. *League of Cities*. Read Secs. 499-501.
4. *League of Provinces*. Read Secs. 502-503.
5. *League and Federation of Local Elective Officials*, Read Secs. 508510.

PUBLIC INTERNATIONAL LAW

I. GENERAL PRINCIPLES

A. *International Law defined.*

1. *Traditional:* That branch of public law which regulates the relations of States and of other entities which have been granted international personality. [This definition focuses on *subjects*, which are entities which possess international personality and with rights and obligations recognized under international law, as against *objects*, which are persons or things in respect of which rights are held and obligations assumed by the *subjects* of international law.]
2. *Modem:* The law that deals with the conduct of States and international organizations, their relations with each other and, in certain circumstances, their relations with persons, natural or juridical [*American Third Restatement*],

B. *Basis of International Law.*

1. *The Law of Nature School.* There is a natural and universal principle of right and wrong, independent of mutual intercourse or compact, which can be discovered and recognized by every individual through the use of his reason and conscience. Since individuals compose the State whose will is but the collective will of the inhabitants, the State also becomes bound by the law of nature.
2. *The Positivist School.* The binding force of international law is derived from the agreement of the States to be bound by it. In this context, international law is not a *law of subordination* but of *coordination*.
3. *The Eclectic or Grotian School.* In so far as it conforms to the dictates of right reason, the voluntary law may be said to blend with the natural law and be, indeed, an expression of it. In case of conflict, the natural law prevails, being the more fundamental law.

C. *Public International Law distinguished from:*

1. *Private International Law.* As to *nature*, international vs. municipal; as to *remedies*, international modes vs. local tribunals; as to *parties*, international entities vs. private persons; as to *enforcement*, international sanctions vs. sheriff/police.²
2. *International Morality or Ethics.* Principles which govern relations of States from the standpoint of conscience, morality, justice and

3. *International Comity.* Rules of politeness/courtesy observed by States in their relations with other States.

4. *International Diplomacy.* Objects of international policy and the conduct of foreign affairs.

5. *International Administrative Law.* Body of laws which regulate the relations and activities of national and international agencies with respect to their material and intellectual interests which have received international recognition.

D. *International Law as true law.* Although it may not comply with John Austin's concept of law, i.e., enforced by sovereign political authority, nonetheless it is still true law.

1. *Application, enforcement and compliance.* The absence of a central law-making authority and the debilitating jurisdictional defects weaken the expectation of compliance in comparison with the situation in the domestic plane. These considerations are, however, balanced by the risk of political/ economic retaliation and other sanctions, such as adverse public opinion, retorsions, reprisals, the UN machinery, and the conviction that obedience will redound to the public good.

E. Relationship with Municipal Law.

1. *Monist vs. Dualist.* To *monists*, there is no substantial distinction between international law and municipal law. But to *dualists*, the distinctions lie in that ML is issued by a political superior for observance by those under its authority, while IL is not imposed but adopted by states as a common rule of action; ML consists of enactments of the law-making authority, while IL is derived from such sources as international customs, conventions or general principles of law; ML regulates relations of individuals among themselves, while IL applies to relations between states and international persons; violations of ML are redressed through local judicial and administrative processes, while in IL, they are resolved through state-to-state transactions; and breaches of ML entail individual responsibility, while in IL there is collective responsibility.

2. *Incorporation v. Transformation.*

a) The doctrine of incorporation is expressed in Sec. 2, Art. II, Philippine Constitution, as follows: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice,

freedom, cooperation and amity with all nations". See: *Kuroda vs. Jalandoni*, 83 Phil. 171 (although the Philippines was not a signatory to the Hague and Geneva Conventions, international jurisprudence is automatically incorporated in Philippine law, thus making war crimes punishable in the Philippines); *Lo Ching vs. Archbishop of Manila*, 81 Phil 601; *Borovsky vs. Commissioner of Immigration*, G.R. No. L-4362 (1951) (where prolonged detention of a stateless alien pending deportation was deemed illegal, citing the Universal Declaration of Human Rights which is incorporated in Philippine law).

b) The doctrine of transformation requires the enactment by the legislative body of such international law principles as are sought to be part of municipal law. See: *Laguna Lake Development Authority vs. Court of Appeals*, 231SCRA 292 (where it was declared that Sec. 6, Art. II, Philippine Constitution, which reads: "*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*", was taken from the Universal Declaration of Human Rights and the Alma Conference Declaration of 1978 recognizing health as a fundamental human right. Thus, the authority of LLDA to issue a cease and desist order to prevent the pollution of Marilao River was upheld on the basis of the principle of necessary implication[^].

3. Conflict between International Law and Municipal Law.

a) On the domestic sphere, with a local court deciding:

i) If the conflict is with the Constitution: uphold the Constitution. [See Sec. 5(2)(a), Art. VIII, *Philippine Constitution*, which provides that the Supreme Court has the power to declare a treaty or executive agreement unconstitutional.] In *Secretary of Justice v. Judge Lantion*, G.R. No. 139465, January 18, 2000, it was held that in states where the Constitution is the highest law of the land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if they are in conflict with the Constitution.

ii) If the conflict is with a statute: The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. A treaty may repeal a statute, and a statute may repeal a treaty; thus, the principle of *lex posterior derogat priori*, that which comes last in time, will usually be upheld by the municipal tribunal. See also *Ichong vs. Hernandez*, 101 Phil. 115, where it was held that the Retail Trade Nationalization Law prevails over the Treaty of Amity with China and the Universal Declaration of Human Rights, because the law was passed in the exercise of the police power of the State, and police power cannot be bargained away through the medium of a treaty or a contract.

b) On the international sphere, with an international tribunal deciding: international law is superior to municipal law, because international law provides the standard by which to determine the legality of a State's conduct.

F. Sources of International Law. On the domestic sphere, the constitution, legislative enactments and case law (*stare decisis*). On the international plane, it is a bit complicated because there is no body likened to a national legislature, no fundamental law, and the doctrine of precedents is not applicable.

1. However, the most authoritative enumeration is found in *Art. 38, Statute of the International Court of Justice*, which provides that the Court, whose function is to decide in accordance with International Law such disputes as are submitted to it, shall apply:

As Primary Sources:

a) International Treaties and Conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

b) International Customs, as evidence of a general practice accepted as binding law through persistent usage over a long period of time, e.g., angary, exemption of unarmed fishing vessel from capture. It is necessary, however, that the custom be [i] prevailing practice by a number of states; [ii] repeated over a considerable period of time; and [iii] attended by *opinio juris* or a sense of legal obligation.

c) General Principles of Law. These are rules derived mainly from natural law, observed and recognized by civilized nations, e.g., *res judicata*, prescription, *pacta sunt servanda* and estoppel. See *Agustin vs. Edu*, where the doctrine of *pacta sunt servanda* was applied by the Court relative to the validity of the administrative rule requiring the use of early warning device, as part of the *Vienna Convention on Road Signs and Signals*.

[*Note:* To these may be added the principle of *ex aequo et bono* (what is good and just), provided that the parties to the dispute agree thereto, as provided in *Art. 38 (1), Statute of the International Court of Justice*.]

As Secondary Sources:

a) Judicial Decisions, generally of international tribunals, the most authoritative being the International Court of Justice. They are not really sources, but "subsidiary means" for finding what the law is, and whether a norm has been accepted as a rule of international law. The decision of a national

court may be used depending upon the prestige and perceived impartiality of the domestic court, not being in conflict with the decisions of international tribunals, and its admissibility in the forum where it is cited.

b) Writings of publicists, which must be fair and unbiased representation of international law by acknowledged authorities in the field.

2. *Interpretation of Art. 38.* Although the provision is silent on the question of whether the three primary sources have the same hierarchic value, by practice, treaties take precedence over customs, and customs over general principles of law, except:

a) The principle of ius cogens: Customary international law which has the status of a peremptory (absolute, uncompromising, certain) norm of international law. A peremptory norm is a norm accepted and recognized by the international community of states as a rule, from which no derogation is permitted and which can be modified only by a subsequent norm having the same character. Examples are slave trade, piracy, and terrorism. See *Human Rights Cases vs. Marcos*, where it was held that official torture of prisoners/ dissenters was a violation of the *principle of jus cogens*.

II. SUBJECTS OF INTERNATIONAL LAW

A. *Distinction between subject and object of international law.*

1. *Subjects and objects of international law.* A *subject* is an entity that has rights and responsibilities under international law; it can be a proper party in transactions involving the application of the law of nations among members of the international community. An *object* is a person or thing in respect of which rights are held and obligations assumed by the *subject*; it is not directly governed by the rules of international law; its rights are received, and its responsibilities imposed, indirectly through the instrumentality of an international agency.

2. The subjects of international law are: states, colonies and dependencies, mandates and trust territories, the Holy See (Vatican City), the United Nations, belligerent-communities, international administrative bodies, and, to a certain extent, individuals.

B. *States.*

1. *Defined.* A state is a group of people, living together in a fixed territory, organized for political ends under an independent government, and capable of entering into international relations with other states.

2. *Elements:*

a) People. A group of individuals, of both sexes, living together as a community. They must be sufficient in number to maintain and perpetuate themselves. A casual gathering (stranded), or a society of pirates would not constitute a state.

b) Territory. The fixed portion on the earth's surface occupied by the inhabitants. It may be as large as China, or as small as Monaco (1/2 sq. mile) or San Marino (38 sq. miles).

c) Government. Must be organized, exercising control over and capable of maintaining law and order within the territory. It can be held internationally responsible for the acts of the inhabitants. The identity of the state is not affected by changes in government.

d) Independence or Sovereignty. Freedom from outside control in the conduct of its foreign (and internal) affairs.

*

3. Other suggested elements of a state are:

a) Civilization.

b) Recognition: The act by which a state acknowledges the existence of another state, a government or a belligerent community, and indicates its willingness to deal with the entity as such under international law. [Note: The importance of recognition has been substituted to a large extent by the act of admission to the United Nations. UN members must treat the new member as an equal partner in all matters relating to the application of the UN Charter. However, recall that the UN General Assembly refused recognition to Transkei (South Africa), and the UN Security Council called upon all states not to recognize Southern Rhodesia.y

i) *Theories on Recognition*:

ia) Constitutive (Minority view¹): Recognition is the act which constitutes the entity into an international person. Under this view, recognition is compulsory and legal; it may be compelled once the elements of a state are established.

ib) Declarative (Majority view): Under the majority view, recognition merely affirms an existing fact, like the possession by the state of the essential elements. It is discretionary and political.

ii) *Basic Rules on Recognition*: It is a political act and mainly a matter of policy on the part of each state; it is discretionary on the part of the recognizing authority; and it is exercised by the political (executive) department of the state. Thus, the legality and wisdom of recognition is not subject to judicial review.

iii) *Requirements for Recognition of Government*: The government is stable and effective, with no substantial resistance to its authority; the government must show willingness and ability to discharge its international obligations; and the government must enjoy popular consent or approval of the people.

iiiat Tobar/Wilson Doctrine: precludes recognition of any government established by revolutionary means until constitutional reorganization by free election of representatives.

iiib) Stimson Doctrine: No recognition of a government established through external aggression.

iiic) Estrada Doctrine: Since recognition has been construed as approval (and non-recognition, disapproval) of a government established

through a political upheaval, a state may not issue a declaration giving recognition to such government, but merely accept whatever government is in effective control without raising the issue of recognition. Dealing or not dealing with the government is not a judgment on the legitimacy of the said government. [Note: Recall the recognition of the People's Republic of China, based on the one China policy]

iv) *Kinds of Recognition.* May be express or implied: may also be:

iva) *De facto:* Extended by the recognizing state which believes that some of the requirements for recognition are absent. The recognition is generally provisional and limited to certain juridical relations; it does not bring about full diplomatic intercourse and does not give title to assets of the state held/situated abroad.

ivb) *De jure:* Extended to a government fulfilling the requirements for recognition. When there is no specific indication, recognition is generally considered as *de jure*. The recognition is relatively permanent; brings about full diplomatic intercourse and observance of diplomatic immunities; and confers title to assets abroad. See: *Lawyers League for a Better Philippines vs. Corazon Aquino, G.R. No. 73748, May 22, 1986.*

v) *Effects of Recognition:* Diplomatic relations; right to sue in the courts of the recognizing state [see Banco Nacional de Cuba vs. Sabbatino, 376 U.S. 398, where unfriendly relations or the lack of reciprocity was held immaterial; immunity from jurisdiction; entitlement to property within the recognizing state; retroactive validation of the acts of the recognized state/ government, such as acts of state, and thus, sovereign immunity covers past, present and future acts [*Oetjen vs. Central Leather Co.*.. 246 U.S. 297].

vi) *Recognition of Belligerency; Conditions.* The usual conditions for the recognition of the status of belligerency are: organized civil government having control and supervision over the armed struggle; serious and widespread struggle with the outcome uncertain; occupation of a substantial portion of the national territory; and willingness on the part of the rebels to observe the rules/ customs of war. [Note: (1) Absence of any of the foregoing conditions will result merely in insurgency which is rarely recognized. (2) Recognition may be either express or implied; the proclamation by the parent state of a blockade of a port held by the rebels is implied recognition of belligerency; so is the proclamation of neutrality by a third statej -

vii) *Effects of Recognition of Belligerency.* Responsibility for acts of rebels resulting in injury to nationals of the recognizing state shall be

shifted to the rebel government; the legitimate government recognizing the rebels shall observe the laws of war in conducting hostilities; third states recognizing the belligerency shall maintain neutrality; and recognition is only provisional (for the duration of the armed struggle) and only for the purpose of the hostilities.

4. *Creation of States.* By revolution, unification, secession, assertion of independence, agreement and attainment of civilization.

5. *Extinction of States.* By extinction or emigration *en masse* of its population, loss of territory, overthrow of government resulting in anarchy.

6. *Principle of State Continuity.* The state continues as a juristic being notwithstanding changes in its circumstances, provided only that such changes do not result in the loss of any of its essential elements. See *Sapphire Case* where, after Emperor Louis Napoleon filed a damage suit on behalf of France in an American court, he was deposed. Nonetheless, the action was not abated and could continue upon recognition of the duly authorized representative of the new government of France.

a) Succession of States. May be *universal* or *partial*. Consequences are: political laws are abrogated [*People vs. Perfecto*, 43 Phil. 887] while municipal laws remain in force [*Vilas vs. City of Manila*, 229 U.S. 345]; treaties are discontinued, except those dealing with local rights and duties, such as those establishing easements and servitudes; all rights of the predecessor state are inherited, but successor state can assume and reject liabilities at its discretion. [Note: In *Haile Selassie vs. Cable Wireless*, it was ruled that a conquered state has no personality in international law]

b) Succession of Governments. The integrity of the State is not affected; the state continues as the same international person except that its lawful representative is changed. The consequences are; all rights of the predecessor government are inherited by the successor; and where the new government was organized by virtue of constitutional reform duly ratified in a plebiscite, all obligations of the predecessor are likewise assumed; however, where the new government is established through violence, the new government may lawfully reject purely personal or political obligations of the predecessor, but not those obligations contracted by it in the ordinary course of official business.

7. *Classes of States.*

a) Independent. Has freedom to direct and control foreign relations without restraint from other states. May be:

i) *Simple*: Single central government, with power over internal and external affairs.

, ii) *Composite*: Two or more sovereign states joined together to constitute one international person, which may be:

iia) Real Union: two or more states are merged under a unified authority so that they form a single international person through which they act as one entity. The states retain their separate identities, but their respective international personalities are extinguished and blended in the new international person. E.g., the former United Arab Republic, with Egypt and Syria.

ifb) Federal Union: combination of two or more states which, upon merger, cease to be states, resulting in the creation of a new state with full international personality to represent them in their external relations as well as a certain degree of power over their domestic affairs and their inhabitants. Authority over internal affairs: divided between federal authorities and the member-states; authority over external affairs: handled solely by federal authorities.

b) Dependent: an entity which, although theoretically a state, does not have full freedom in the direction of its external affairs, such as a *protectorate* (which is established at the request of the weaker state for the protection by a strong power, e.g., Panama, Andorra, Monaco) or a *suzerainty* (which is the result of a concession from a state to a former colony that is allowed to be independent subject to the retention by the former sovereign of certain powers over the external affairs of the latter, e.g., Bulgaria and Rumania, both suzerainties of the Sultan of Turkey by virtue of the Treaty of Berlin of 1878).

c) Neutralized: whose independence and integrity are guaranteed by an international treaty on the condition that such state obligates itself never to take up arms against any other state (except in self-defense), or to enter into an international obligation as would indirectly involved it in war, e.g., Switzerland, Austria.

C. The Vatican City and the Holy See.

1. The Holy See has all the constituent elements of statehood (people: less than 1000 individuals; territory: 108.7 acres; government with the Pope as head; and independence by virtue of the Lateran Treaty of February 11, 1929, which constituted the Vatican as a territory under the sovereignty of the Holy See). It has all the rights of a state, including diplomatic intercourse, immunity from foreign jurisdiction, etc..

2. See *Holy See vs. del Rosario*, 238 SCRA 524, where the Supreme Court distinguished Vatican City from the Holy See. The Holy See is an international person with which the Philippines had diplomatic ties since 1957.

D. Colonies and Dependencies. A *colony* is a dependent political community consisting of a number of citizens of the same country who have migrated therefrom to inhabit another country, but remain subject to the mother State. A *dependency* is a territory distinct from the country in which the supreme sovereign power resides, but belongs rightfully to it, and subject to the laws and regulations which the sovereign may prescribe. [Note: Theoretically, they belong to the parent state and, thus, are without any personality in the international community. However, on occasions, colonies have been allowed to participate in their own right in certain international undertakings, e.g., the Philippines was admitted as a signatory to the UN Charter]

E. Territories under international control or supervision. These are non-self-governing territories which have been placed under international supervision or control to insure their political, economic, social and educational advancement. An example are *mandates*, which were former territorial possessions of the states defeated in World War I and placed under the control of the League of Nations. Many of these *mandates* became *trust territories* placed under the Trusteeship Council of the United Nations.

1. A *condominium* is a territory jointly administered by two states.

F. The United Nations.

1. *Historical development of the United Nations.*

- a) The League of Nations, [considered to have failed in attaining its primary objective of maintaining international peace and order, especially after the outbreak of World War II],
- b) The London Declaration, June 12, 1941.
 - c) The Atlantic Charter, August 14, 1941.
 - d) Declaration by United Nations, January 1, 1942.
 - e) Moscow Declaration, October 30, 1943.
 - f) Dumbarton Oaks Proposal, Washington, August to October 1944.
 - g) Yalta Conference, Crimea, February 11, 1945.
 - h) San Francisco Conference, April 25 to June 28, 1945, at which delegates from 50 nations unanimously approved the United Nations Charter which came into force on October 24, 1945.

i) On April 8, 1993, the UN General Assembly welcomed Macedonia, its 184th member, into the community of nations.

2. *The UN Charter*. This is the closest to a constitution that basically governs the relations of international persons. Technically, it is a treaty, a contract which the parties must respect under the doctrine of *pacta sunt servanda*, although it actually applies even to non-member States, at least in so far as "may be necessary for the maintenance of international peace and security". It consists of 111 articles, besides the Preamble and the concluding provisions. Annexed to it is the Statute of the International Court of Justice.

a) Amendment, [i] By a vote of 2/3 of the members of the General Assembly and ratified in accordance with their respective constitutional processes by 2/3 of the members of the United Nations, including all the permanent members of the Security Council; [ii] A general conference, called by a majority vote of the General Assembly and any nine members of the Security Council, may propose amendments by a 2/3 vote of the conference, and shall take effect when ratified by 2/3 of the members of the UN, including the permanent members of the Security Council.

b) Purposes. The principal objectives of the UN are the prevention of war, the maintenance of international peace and security, the development of friendly relations among the members of the international community, the attainment of international cooperation, and harmony in the actions of nations.

3. *Membership*.

a) Classes: Based on the manner of admission, members may be *original* or *elective*.

b) Qualifications: member must be a State, peace loving, accept the obligations under the Charter, and be able and willing to carry out these obligations.

c) Admission: decision of 2/3 of those present and voting in the General Assembly upon recommendation of at least nine (including all the permanent) members of the Security Council.

d) Suspension: the same vote required as in admission. When suspended, a member cannot participate in meetings of the General Assembly; cannot be elected to or continue to serve in the Security Council, the Economic and Social Council, the Trusteeship Council; but nationals may continue

serving in the Secretariat and the International Court of Justice, although a member is still subject to discharge its obligations under the Charter. To lift the suspension, a qualified majority vote of the Security Council is needed.

e) Expulsion: 2/3 vote of those present and voting in the General Assembly, upon recommendation of a qualified majority of the Security Council, on grounds of persistently violating the principles contained in the Charter.

f) Withdrawal. It was intended that no provision on withdrawal be included in the Charter, although there is actually no compulsion for continued membership if the member feels constrained to withdraw due to exceptional circumstances. On March 1, 1965, Indonesia tried to withdraw in protest over Malaysia's election as member of the Security Council, but it appeared later that it was merely a cessation of cooperation, not withdrawal — and the UN allowed resumption of full membership of Indonesia on September 28, 1966.

4. *Organs.*

a) General Assembly. Consists of all the members of the organization, each of which is entitled to send not more than 5 representatives and 5 alternates. Each member has only one vote. Its functions may be classified into [i] *Deliberative*, like initiating studies and making recommendations for the development of international law, etc.; [ii] *Supervisory*, such as receiving and considering annual and special reports from other organs of the UN; [iii] *Financial*, as the consideration and approval of the budget of the organization, the apportionment of expenses, etc.; [iv] *Elective*, as in the election of the nonpermanent members of the Security Council, all members of the EcoSoc, etc.; and [v] *Constituent*, such as the admission of members and the amendment of the Charter. Its regular session is held once a year, and it may hold special sessions called by the Secretary General at the request of the Security Council or a majority of the members. On important questions, e.g., peace, security, membership, elections, trusteeship system, budget, the vote of 2/3 of the members present and voting is required; on other questions, a simple majority is sufficient. To classify a question as important, the vote required is a simple 'majority.

b) Security Council. It is the key organ in the maintenance of international peace and security. It is composed of five (5) permanent members, namely: China, France, Russia, the United Kingdom and the United States; and ten (10) elective members, elected for two-year terms by the General Assembly, five from African and Asian states, two from Latin American states, two from Western European and other states, and one from Eastern European states. For the elective members, no immediate reelection is allowed. The

Security Council is expected to function continuously, and sessions may be called at any time; thus, the representative of the member states should always be available.

i) *Functions.* The Security Council has primary responsibility to maintain international peace and security; investigate disputes and call disputants to settle their differences through peaceful means; recommend methods of adjustment of disputes; determine the existence of threats to peace, breach of peace, acts of aggression, and make appropriate recommendations; and to undertake preventive and enforcement actions, [ia] Preventive action shall consist of provisional measures to prevent a conflict from worsening, and may involve the deployment of *peacekeeping* and/or observer missions. These missions shall be established by the Security Council, directed by the Secretary General, with the consent of the host government; provided that the military observers shall be unarmed, while peace keeping forces may be armed with light weapons although they are not authorized to use force except in self defense, and the operations must not interfere with the internal affairs of the host country. Other measures may also be undertaken against erring members, such as interruption of economic relations, communications or diplomatic relations, e.g., the ban, except for humanitarian reasons, on airflights for Libya because of the bombing of PanAm flight 103. [ib] Enforcement action may consist in the deployment of air, sea and land forces, or in the institution of a blockade. Enforcement actions in the past had been usually stymied by the veto power of the permanent members of the Security Council.

ii) *Domestic jurisdiction clause.* The Security Council may take such steps as are necessary for the settlement of disputes, including preventive or enforcement action, as mentioned above. The only limitation is that the dispute must be international, not domestic, in character. Otherwise, such action would violate the principle that the UN shall not intervene in any matter within the domestic jurisdiction of any State.

iii) *Voting: The Yalta Formula.* Each member of the Security Council shall have one vote, but distinction is made between the permanent members and the non-permanent members in the resolution of substantive questions. Procedural matters are to be decided by the affirmative vote of any nine or more members. Non-procedural matters are decided by the concurrence of at least nine members, including all the permanent members. The determination of whether a matter is procedural or substantive is nonprocedural. This allows for the so-called "double veto" by a permanent member of the Council. However, the abstention or absence of any permanent member is not considered a "veto".

c) Economic and Social Council. Composed of fifty-four (54) members elected by the General Assembly for a three-year term. It shall exert efforts towards higher standards of living, conditions of economic and social progress and development, solutions of international economic, social, health and related problems, universal respect for and observance of human rights and fundamental freedoms. Decisions are reached by a simple majority vote.

d) Trusteeship Council. Charged with the duty of assisting the Security Council and the General Assembly in the administration of the International Trusteeship System. It is composed of [i] members of the UN administering trust territories; [ii] permanent members of the Security Council not administering trust territories; and [iii] as many other members elected by the General Assembly as may be necessary to ensure that the total number of members is equally divided between those members of the UN which administer trust territories and those which do not. Note that the last trust territory, Micronesia, has since then become an independent state.

e) Secretariat. The chief administrative organ of the UN; headed by the Secretary General who is chosen by the General Assembly upon recommendation of the Security Council. The Secretary General is the highest representative of the UN, and is authorized to act in its behalf. He also acts as Secretary in all meetings of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council. The Secretary General and his staff are international civil servants, and they cannot receive instructions from any government or source outside the UN. The Secretary General enjoys the *right of political initiative*, and may bring to the attention of the UN Security Council any matter which, in his opinion, may threaten international peace and security.

f) International Court of Justice. It is the principal judicial organ of the UN; composed of 15 members who are elected for a term of nine years by absolute majority vote in the General Assembly and the Security Council, in separate elections, no two of whom must be nationals of the same state. They must be of high moral character and possess the qualifications required in their respective countries for appointment to their highest judicial offices.ⁱ⁾

i) The Court decides contentious cases, and renders advisory opinions. Only states, including non-members of the UN, may be parties in contentious cases. The jurisdiction of the Court is based on the consent of the parties in accordance with the "*optional jurisdiction clause*", and the Court may decide on interpretation of treaties, any question of international law, the existence of facts constituting breach of international obligations,

and the nature or extent of the reparation to be made for the breach of an international obligation. Advisory opinions may be given upon request of the General Assembly, or the Security Council, or the other organs of the UN when authorized by the General Assembly.

G. Belligerent Communities. Discussed later.

H. International Administrative Bodies. Certain administrative bodies, created by agreement among states, may be vested with international personality, provided that they are non-political and are autonomous and not subject to control by any state, e.g., ILO, FAO, WHO.

1. *International Law Commission.* This was established by the UN General Assembly in 1947 to promote the codification and progressive development of international law. One of the functions of the Commission is to produce Draft Articles which may codify certain customary international law or aid in its development. Among these, of great significance, is the Draft Articles on State Responsibility, which are often considered as embodying generally customary international law on the matter.

2. *Legality of the Threat or Use of Nuclear Weapons Opinion [WHO Case, ICJ Rep. 1996 66].* The International Court of Justice ruled that it did not have jurisdiction to decide on the request of the World Health Organization for the former to render an advisory opinion on whether the “use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the WHO Convention”.

a) Unlike States which possess general competence, international organizations are governed by the *principle of specialty*, that is, they are invested by the States which create them with powers, the limits of which are a function of the common interest whose promotion those States entrust to them. In the opinion of the International Court of Justice, to ascribe to WHO the competence to address the legality of the use of nuclear weapons would be tantamount to disregarding the *principle of specialty*, for such competence could not be deemed a necessary implication of the Constitution of WHO in light of the purposes assigned to it by the member States.

I. Individuals. Although traditionally, individuals have been considered merely as objects, not subjects, of international law, they have also been granted a certain degree of international personality under a number of international agreements, some of which are: [a] *UN Charter* provision on “faith in fundamental human rights, dignity and worth of the human person, and in the equal rights of men and women”; [b] *Universal Declaration of Human*

Rights provision on “the inherent dignity and the equal and inalienable rights of all members of the human family”; [c] Some treaties, e.g., the *Treaty of Versailles*, which confer on individuals the right to bring suit against States before national or international tribunals; [d] The need for States to maintain an *international standard of justice* in the treatment of aliens; [e] The *Genocide Convention*, which condemns the mass extermination of national, ethnic, racial or religious groups; [f] The *1930 Hague Convention* with its rules to prevent the anomalous condition of statelessness, and the *1954 Covenant Relating to the Status of Stateless Persons*, which grants stateless individuals certain basic rights; and [g] The *1950 European Convention on Human Rights and Fundamental Freedoms*, which grants private associations and individuals the right to file complaints before the European Court on Human Rights.

III. FUNDAMENTAL RIGHTS OF STATES

A. *Existence and Self-Preservation.*

1. By far the most basic and important right. Art. 51 of the UN Charter recognizes the right of the state to individual and collective self-defense (through regional arrangements) if an armed attack occurs against such state, until the Security Council has taken measures necessary to maintain international peace and security. However, the right may be resorted to only upon a clear showing of grave and actual danger, and must be limited by necessity. It is eventually the Security Council which determines whether or not an "armed attack" has taken place.

2. *Aggression:* The use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in other any manner inconsistent with the UN Charter. The first use of armed force by a State in contravention of the UN Charter is *prima facie* evidence of an act of aggression.

a) Other principles: No consideration of whatever nature, political, economic or military, can justify aggression; a war of aggression is a crime against international peace which will give rise to international responsibility; no territorial acquisition or special advantage resulting from aggression shall be recognized as lawful. But all these are without prejudice to the right of selfdetermination, freedom and independence of peoples deprived of such rights, nor the right of these peoples to struggle to that end and to seek and receive support.

B. *Right to Sovereignty and Independence.*

1. '*Sovereignty* is the totality of the powers, legal competence and privileges of a state arising from customary international law, and not dependent on the consent of another state. *Independence* is the freedom to conduct foreign relations without outside control. The right to independence is a natural aspiration of peoples, but it is not an absolute freedom. Valid restraints may consist in the obligation to observe the rights of others; treaty stipulations; and obligations arising from membership in international organizations.²

2. *Intervention.* Act by which a states interferes in the domestic or foreign affairs of another state through the use of force or threat of force (whether physical, political or economic). See *Nicaragua vs. US, Communiqué 86/8, June 27, 1986*, where the US was found guilty of intervention in the affairs of

Nicaragua for sending troops to Nicaragua to aid the *contras*, inasmuch as there was no armed attack against the latter. Note that protest or demand for rectification or reparation does not comprise intervention. Thus, the act of President Clinton in discouraging Americans from investing in Burma was not considered as intervention.

a) Intervention used to be justified by various reasons, from preservation of the balance of power, pre-emptive self-defense, enforcement of treaty obligations, collection of debts (later prohibited by the *Drago Doctrine* embodied in the Hague Convention of 1907, which provided that the contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due its nationals). This was weakened by the *Porter Resolution*.... *but*

b) Under contemporary international law, as a rule, intervention is not allowed. International disputes have to be settled by peaceful means. Under Art. 2, UN Charter, even the UN is precluded from intervening in matters essentially within the domestic jurisdiction of a state, unless necessary to remove and prevent threats to the peace, breaches or acts of aggression. A 1965 UN General Assembly resolution states that no state has the right to intervene, directly or indirectly, in the affairs of another.

c) At present, intervention is allowed only as an act of individual or collective self-defense in response to an armed attack; pursuant to treaty stipulations; or with prior UN authorization.

C. ***The Right of Equality.***

1. *Art. 2, UN Charter*, states that the organization is based on the principle of sovereign equality of all its members. But what is really guaranteed is legal — or sovereign — equality: “equal in law, rights of sovereignty, personality, territorial integrity and political independence respected by others”. This is exemplified in the General Assembly where each member is entitled to one vote; but there may be no equality in fact, e.g., voting in the UN Security Council.²

2. *Act of State doctrine*. Every sovereign state is bound to respect the independence of every other state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves [*Underhill v. Hernandez*, 168 U.S. 250].

a) A state should not inquire into the legal validity of the public acts of another state done within the territory of the latter. For this purpose, considerations such as motive are immaterial. Thus, in *Underhill vs. Hernandez*, the US court refused to inquire into the acts of Hernandez (a Venezuelan Military Commander whose government was later recognized by the US) in a damage suit brought in the US by an American who claimed that he had been unlawfully assaulted, coerced and detained by Hernandez in Venezuela. However, in the *Sabbatino case* the U.S. court said that no court in the US should decline because the act of state doctrine seems to make a determination on the validity of the confiscation of property by a foreign state a violation of the principle of international law.

b) In *Republic of the Philippines vs. Marcos*, 806 Fd. 344, US Court of Appeals, the act of state doctrine or the principle of sovereign immunity, invoked by Ferdinand Marcos, was not appreciated inasmuch as there was no evidence adduced which showed that the acts were public, i.e., that the Marcos wealth was obtained through official expropriation decrees and the like. Besides, acts of torture, execution and disappearance were clearly acts outside of the President's authority and are not covered by the *act of state* doctrine.

3. *Doctrine of State Immunity*. As a consequence of independence, territorial supremacy and equality, a state enjoys immunity from the exercise of jurisdiction (legislative, executive or judicial) by another state, unless it has given consent, waived its immunity, or voluntarily submitted to the jurisdiction of the court concerned. Neither may its public property be attached or taxed, nor its public vessels be boarded, arrested or sued. This is based on the principle of *par in parem non habet imperium*. The state's immunity extends to the Head of State who is the personification of the state [See *Mighell vs. Sultan of Johore*, 1 QB 149, where the Sultan, who was certified by the British Minister of the Crown as having the status of a head of state, was held to be immune from the jurisdiction of English courts].

a) Restrictive application of the doctrine. This immunity, however, is recognized only with respect to sovereign or public acts of the state, and cannot be invoked with respect to private or proprietary acts. [See *U.S. vs. Ruiz*, 136 SCRA 487, where the Supreme Court classified contracts entered into by the state into those in *jure imperii* and those in *jure gestionis*. See also *US vs. Guinto*, 182 SCRA 644, where the contract involved a concession for a barber shop facility in the naval base, and was considered a contract in *jus gestionis*.] Neither may this immunity be invoked when the foreign state sues in the courts of another state, for then it is deemed to have submitted itself to the ordinary incidents of procedure and thus, a counterclaim may be validly set up against it.

b) On labor contracts, see *US vs. Rodrigo*, 182 SCRA 644 (cook in restaurant at USAF recreation center operated for profit); and *JUSMAG Phil. vs. NLRC*, 239 SCRA 224, where it was held that when JUSMAG hired private respondent it was performing governmental functions pursuant to the military assistance agreement of March 21, 1947.

c) Immunity extends to diplomatic personnel to the United Nations its organs and specialized agencies, and to international organizations. See: *Lasco vs. UN Revolving Fund for Natural Resources Exploration*, 241 SCRA 681; *World Health Organization vs. Aquino*, 48 SCRA 242; *International Catholic Migration vs. Calleja*, 190 SCRA 130; *Callado vs. International Rice Research Institute*, 244 SCRA 210; and *SEAFDEC vs. NLRC* 241 SCRA 580.

d) Waiver of immunity. The state is deemed to have waived its immunity when it gives consent at the time the proceeding is instituted; when it takes steps relating to the merits of the case before invoking immunity; when, by treaty or contract, it had previously given consent; or when, by law or regulation in force at the time the complaint arose, it has indicated that it will consent to the institution of the proceedings. Thus, in *Republic of the Philippines vs. Ferdinand Marcos*, *supra*., the U.S. Court of Appeals rejected the Marcos defense of immunity of the head of state, because this immunity is waivable, and the same had been waived by the Philippine Government.

e) See also discussion on JURISDICTION, *infra*.

IV. RIGHT TO TERRITORIAL INTEGRITY AND

A. Territory.

1. *Defined:* The fixed portion on the surface of the earth on which the State settles and over which it has supreme authority. The components of the territory of the State are the terrestrial, fluvial, maritime and aerial domains.

2. *National Territory of the Philippines.* Sec. 1, Art. I, Philippine Constitution, defines the national territory of the Philippines, as follows: “*The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of the terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. > The waters around, between and connecting the islands of the archipelago, regardless of their breadth or dimensions, form part of the internal waters of the Philippines.*”

a) Organic acts and issuances affecting the National Territory, (i) Treaty of Paris of December 10, 1898 [cession of the Philippine islands by Spain to the United States]; (ii) Treaty between Spain and the U.S., at Washington, on November 7, 1900 [Cagayan, Sulu and Sibuto]; (iii) Treaty between the U.S. and Great Britain, January 2, 1930 [Turtle Islands and Mangsee Islands];

(iv) 1935 Constitution [Batanes]; (v) 1973 Constitution [territory belonging to the Philippines by historic right or legal title]; and (vi) PD 1596, June 11, 1978 [Philippines officially laid claim to the Kalayaan Islands by virtue of occupation and exercise of jurisdiction],

b) The second sentence of Sec. 1, Art. I, is a statement of the *archipelago doctrine* of national territory (discussed below).

B. Land Territory [Terrestrial Domain].

1. *Modes of acquisition.*

a) Discovery and occupation. Territory not belonging to any State, or *terra nullius*, is placed under the sovereignty of the claiming State. “Discovery”, alone, merely creates an inchoate right; it must be followed within a reasonable time by effective occupation and administration. Thus, in the *Palmas Island Arbitration* case, the inchoate right flowing from discovery was deemed lost because administration was not undertaken within a reasonable time.

However, in the *Clipperton Island* case, very infrequent administration was upheld, because the territory was a small, desolate island. Likewise, in the *Eastern Greenland* case, it was held that in thinly populated and uninhabited areas, very little actual exercise of sovereignty was needed in the absence of competition.

i) *The Kalayaan Islands*. Between 1947 to 1956, Tomas Cloma, a Filipino, discovered the Kalayaan Islands (a 53-island group not part of the Spratlys). Subsequently, Cloma ceded his rights to the Philippine Government. By virtue of Presidential Decree No. 1596 (June 11, 19978), the Philippines formally laid claim to the islands by virtue of occupation and exercise of jurisdiction. The Municipality was established as part of the Province of Palawan. On May 20, 1980, the Philippines registered its claim with the United Nations Secretariat. The Philippine claim to the islands is justified by reason of history, indispensable need, and effective occupation and control. Thus, in accordance with international law, the Kalayaan group is subject to the sovereignty of the Philippines. [By virtue of the *Manila Declaration of 1992*, it was agreed that whatever conflicting claims there may be over the islands shall be resolved in a peaceful manner, through diplomatic negotiations.]

b) Prescription. Territory may also be acquired through continuous and uninterrupted possession over a long period of time, just like in civil law. In international law, however, there is no rule of thumb as to the length of time needed for acquisition of territory through prescription. In this connection, consider the *Grotius doctrine of immemorial prescription*, which speaks of uninterrupted possession going beyond memory.

c) Cession (by treaty). Cession may be voluntary, through a treaty of sale, e.g., the sale of Alaska by Russia to the U.S., or through a treaty of donation, e.g., the donation of Sabah by Borneo to the Sultan of Sulu. Cession may also be involuntary, or forced, such as the treaty entered into by the U.S. and Spain after the Spanish-American War, although the treaty was denominated one of sale, whereby Spain ceded the Philippines, Puerto Rico, Marianas and Guam to the U.S. for \$20M.

d) Conquest. This mode of acquisition is no longer recognized, inasmuch as the UN Charter prohibits resort to threat or use of force against the territorial integrity or political independence of any State. Thus, the annexation of Kuwait by Iraq was declared null and void by the UN Security Council in Resolution No. 662. Even before the UN Charter, under the *Stimson Doctrine*, which forbade recognition of any government set up through external aggression, conquest was not considered a valid mode of acquiring territory, e.g., the Japanese conquest of Manchuria (China).

e) Accretion. The increase in the land area of the State, either through natural means, or artificially, through human labor. Read on the *Sector Principle*, applied in the Polar regions of the Arctic and Antarctica.

C. Maritime Territory [Fluvial and Maritime Domain],

1. *Internal (National) Waters*. Bodies of water within the land mass, such as rivers, lakes, canals, gulfs, bays and straits. The *UN Convention on the Law of Sea* defines internal waters as all waters on the landward side of the baselines of the territorial sea.

a) Rivers, which may be *national; boundary*, i.e., which divides the territories of States; or *international*, which flows through various states.

i) *Thalweg Doctrine*. For boundary rivers, in the absence of an agreement between the riparian States, the boundary line is laid on the middle of the main navigable channel.

ii) *Middle of the bridge doctrine*. Where there is a bridge over a boundary river, the boundary line is the middle or center of the bridge.

b) Bays and gulfs. A bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a curvature of the coast. The area must be as large or larger than a semi-circle whose diameter is a line drawn across the mouth of such indentation, or if the mouth is less than 24 miles wide. A *historic bay*, e.g., the Hudson Bay in Canada, is one whose waters are considered internal because of the existence of a historic title.

c) Straits. Narrow passageways connecting two bodies of water. If the distance between the two opposite coasts is not more than six miles, they are considered internal waters.

d) Canals. The most famous are the Suez Canal, which is neutralized, and the Panama Canal, which is open to everyone in times of war or peace.

2. *Archipelagic Waters*. The Archipelago Doctrine: The waters around, between and connecting the islands of the archipelago, regardless of their breadth or dimension, are to be treated as internal waters.

a) Archipelago: a group of islands, including parts of islands, interconnecting waters, and other natural features which are closed interrelated in such¹ islands, waters and other natural features which form an intrinsic

geographical, economic and political entity, or which historically has been regarded as such.

b) Straight Baseline Method. To determine the extent of the archipelagic waters, the archipelagic state shall draw straight baselines connecting the outermost points of the outermost islands and drying reefs, provided that the ratio of the area of the water to the area of the land, including atolls, is between 1:1 and 9:1. The length of such baselines shall not exceed 100 nautical miles, except that up to 3% of the total number of base lines enclosing any archipelago may exceed that length, up to a maximum of 125 miles. The baselines drawn should not depart, to any appreciable extent, from the general configuration of the archipelago. All the waters within the baselines shall then be considered as internal waters. The breadth of the 12- mile territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall then be measured from the archipelagic baselines.

c) Vessels may be allowed *innocent passage* within the archipelagic waters, but this right may be suspended, after publication, in the interest of international security. The coastal State may also designate *archipelagic sea lanes* for continuous, unobstructed transit of vessels.

3. *Territorial Sea*. The belt of the sea located between the coast and internal waters of the coastal state on the one hand, and the high seas on the other, extending up to 12 nautical miles from the *low-water mark*, or in the case of archipelagic states, from the *baselines*.

a) The general rule is that ships (not aircraft) of all states enjoy the *right of innocent passage* through the territorial sea (not through internal waters). It is understood, however, that the passage must be continuous and expeditious, except in cases of *force majeure*. Submarines and other underwater craft are required to navigate on the surface and to show their flag.

4. *Contiguous Zone*. Extends up to 12 nautical miles from the territorial sea. Although technically, not part of the territory of the State, the coastal State may exercise limited jurisdiction over the contiguous zone, to prevent infringement of customs, fiscal, immigration or sanitary laws.⁵

5. *Exclusive Economic Zone*. Extends up to 200 nautical miles from the low-water mark or the baselines, as the case may be. Technically, the area beyond the territorial sea is not part of the territory of the State, but the coastal State may exercise sovereign rights over economic resources of the sea, seabed, subsoil, although other States shall have freedom of navigation

and over-flight, to lay submarine cables and pipelines, and other lawful uses. States with overlapping exclusive economic zones are enjoined to enter into the appropriate treaty for the joint exploitation and utilization of the resources in the area. Included in the Philippines' exclusive economic zone is the *Scarborough Shoal*, a rock formation about 135 kilometers from Iba, Zambales.

6. *Continental Shelf*. It comprises the sea-bed and the subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 miles from the baselines from which the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. The coastal State also enjoys the right of exploitation of oil deposits and other resources in the continental shelf. In case the continental shelf extends to the shores of another State, or is shared with another State, the boundary shall be determined in accordance with equitable principles [*North Sea Continental Shelf Cases, 1969 ICJ Reports*],

7. *High Seas*. The high seas are treated as *res communes* or *res nullius*, and thus, are not territory of any particular State. The traditional view is *freedom of the high seas*, - i.e., they are open and available, without restriction, to the use of all States for the purpose of navigation, flight over them, laying submarine cables and pipes, fishing, research, mining, etc.. At present, however, this rule is subject to regulation arising from treaty stipulations, e.g., regulations to keep the sea from pollution or prohibiting nuclear testing.

a) Freedom of navigation refers to the right to sail ships on the high seas, subject only to international law and the laws of the *flag state*. See discussion on Jurisdiction, *infra*..

8. *Settlement of Disputes arising from the UN Convention on the Law of the Sea (UNCLOS)*. Part XV of the 1982 UN Convention on the Law of the Sea requires States to settle peacefully any dispute concerning the Convention. Failing a bilateral settlement, Art. 286 provides that any dispute shall be submitted for compulsory settlement to one of the tribunals having jurisdiction. These include the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice, and arbitral or special arbitral tribunals constituted under the UNCLOS.

a) The ITLOS is composed of 21 independent members elected by the States Parties to the UNCLOS from among persons with recognized competence in the field of the law of the sea and representing the principal legal systems of the world. ITLOS has jurisdiction overall disputes and all applications submitted to it in accordance with UNCLOS and over all matters specifically provided for in any other agreement which confers jurisdiction on the ITLOS.

D. *Air territory [Aerial Domain]*, This refers to the air space above the land and waters of the State.

1. In the *International Convention on Civil Aviation (Chicago Convention)*, December 7, 1944, "the contracting parties recognize that every State has complete and exclusive sovereignty over the air space above its territory (land, internal waters, territorial sea)"; but this shall not include *outer space*, which is considered as *res communes*. Other States have no right of innocent passage over the air territory of another State.

a) *Five Freedoms (of Air Transportation for Scheduled International Services)*: To fly across the territory without landing; land for non-traffic purposes; land to put down passenger, mail, cargo of flag territory; land to take passenger, mail and cargo of flag territory; and to put down passenger, mail and cargo from these territories.

b) Pursuant to the 1981 resolution of the International Civil Aviation Organization, intrusions into the air space by civilian aircraft may be intercepted, but in no case shall the interception be attended with the use. *of weapons*. Military aircraft may, however, be shot down, e.g., 1983 incident involving a Korean Airlines plane which violated Soviet air space.

2. *Outer Space*. The rules governing the high seas apply also to outer space, which is considered as *res communes*. Under customary international law, States have the right to launch satellites in orbit over the territorial air space of other States. Pursuant to the *Outer Space Treaty of 1967*, outer space is free for exploration and use by all States; it cannot be annexed by any State; and it may be used exclusively for peaceful purposes. Thus, nuclear weapons of mass destruction may not be placed in orbit around the earth. In the *1972 Convention on International Liability for Damage Caused by Space Objects*, States which launch objects into space may be held liable for the harmful contamination caused by such objects, or for the damage which may be caused by falling objects, e.g., *Skylab*.

a) Theories on where outer space begins: (i) Lowest altitude for artificial earth satellites to orbit without being destroyed by friction (90 kms above earth); (ii) theoretical limits of air flights (84 kms); and (iii) the *functional approach*, i.e., that the rules shall not depend on the boundaries set, but on the nature of the activity undertaken.

E. *Jurisdiction*. The power or authority exercised by a State over land, persons, property, transactions and events. The basic question of jurisdiction centers upon which State has sovereignty or legal control over land, persons,

ships at sea, airships in flight, property, transactions or events, in various situations.

1. *Bases of Jurisdiction.*

a) Territorial Principle. The State may exercise jurisdiction only within its territory. Exceptionally, it may have jurisdiction over persons and acts done outside its territory depending on the kind of jurisdiction it invokes. While there is no territorial limit on the exercise of jurisdiction over civil matters, a State, as a general rule, has criminal jurisdiction only over offenses committed within its territory, except over (i) continuing offenses; (ii) acts prejudicial to the national security or vital interests of the State; (iii) universal crimes; and (iv) offenses covered by special agreement (although this is now obsolete).

b) Nationality Principle. The State has jurisdiction over its nationals anywhere in the world, based on the theory that a national is entitled to the protection of the State wherever he may be, and thus, is bound to it by duty of obedience and allegiance, unless he is prepared to renounce his nationality. This applies to civil matters, e.g., *Art. 15, Civil Code*, which provides: "Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad"; and also in taxation. The principle does not, however, apply to criminal offenses; but see *Blackmer v. U.S.*, 284 U.S. 421, where the US Supreme Court upheld a judgment for contempt against an American who refused to return from France to testify in the U.S.

c) Protective Principle. State has jurisdiction over acts committed abroad (by nationals or foreigners) which are prejudicial to its national security or vital interests. See *Art. 2, Revised Penal Code*, which speaks of Philippine criminal jurisdiction over (i) offenses committed on board a Philippine ship or airship; (ii) forgery/counterfeiting of Philippine coins or currency notes; (iii) introduction into the Philippines of such forged or counterfeit coins or notes; (iv) offenses committed by public officers or employees in the exercise of official functions; and (v) crimes against national security and the law of nations. See also *Joyce v. Director of Public Prosecution, House of Lords, December 18, 1945*, where a British national was deemed to owe continuing allegiance (even after he renounced his nationality) under the *doctrine of indelible allegiance*, and thus, was successfully prosecuted for treason committed abroad.

d) Principle of Universality. State has jurisdiction over offenses considered as universal crimes regardless of where committed and who committed them. Universal crimes are those which threaten the international community as a whole and are considered criminal offenses in all countries,

e.g., piracy *jure gentium*, genocide, white slave trade, hi-jacking, terrorism, war crimes. See *Attorney General v. Eichmann*.

e) Principle of Passive Personality. State exercises jurisdiction over crimes against its own nationals even if committed outside its territory. This principle may be resorted to if the others are not applicable.

2. Exemptions from Jurisdiction:

a) Doctrine of State Immunity. [Already discussed above.]

b) Act of State Doctrine. A State should not inquire into the legal validity of the public acts of another State done within the territory of the latter. See *Underhill v. Hernandez*, 168 U.S. 250, where the US court refused to inquire into the acts of Hernandez (a Venezuelan military commander whose government was later recognized by the US) in a damage suit brought in the US by Underhill, an American, who claimed that he had been unlawfully assaulted, coerced and detained by Hernandez in Venezuela. In *I/KS. Kirkpatrick v. Environmental Tectonic Corporation*, 29 ILM 182, it was held that other considerations, like motive, are not material in the application of the doctrine.

i) This doctrine is more of a choice of law rule, and may be raised by private parties. But note *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, where it was stated that "no court in the US should decline because the act of state doctrine seems to make a determination on the validity of the confiscation of property by a foreign State in violation of the principles of international law". In *Republic of the Philippines v. Ferdinand Marcos*, 806 Fd. 2d. 344, US Court of Appeals, it was held that acts of torture, execution and disappearance were clearly acts outside the President's authority and are not covered by the act of state doctrine, citing the case of the Venezuelan dictator, Marcos Perez Jimenez, which distinguished legal acts from acts for personal profit which lack basis in law.

c) Diplomatic Immunity. Part of customary international law which grants immunity to diplomatic representatives, in order to uphold their dignity as representatives of their respective States and to allow them free and unhampered exercise of their functions. There are varying rules for different diplomats. The procedure for claiming this immunity starts with a request by the foreign State for an executive endorsement by the Department of Foreign Affairs, and the determination made by the Executive Department is a political question which is conclusive on Philippine courts.

i) The head of State enjoys personal immunity from the jurisdiction of another State [*Mighell v. Sultan of Johore*, 1 QB 149].

ii) Read the *1961 Vienna Convention on Diplomatic Relations*, which provides, among others, the right of the foreign State to acquire property in the receiving State for its diplomatic mission (Art. 20 & 22), as well as the immunity of the diplomatic envoy from civil jurisdiction of the receiving State over any real action relating to immovable property which the envoy holds on behalf of the sending State for purposes of the mission. See also *Holy See v. Rosario*, 238 SCRA 524, where it was held that the sale of the parcel of land was not commercial in nature as it was not for profit, but that the transaction was clothed with governmental character.

d) Immunity of the United Nations, its Organs, Specialized Agencies, Other International Organizations, and its Officers. See Art. 105, *UN Charter*, which provides that the “organization, officers, representatives of members, (who) shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions”. The reason for the grant of privileges and immunities to international organizations, its officials and functionaries, is to secure them legal and practical independence in fulfilling their duties [*Lasco v. UN Revolving Fund for National Resources Exploration*, 241 SCRA 681]; to shield the affairs of international organizations, in accordance with international practice, from political pressure or control by the host country to the prejudice of member States, and to ensure the unhampered performance of their functions [*International Catholic Migration v. Calleja*, 190 SCRA 130],

i) Under the *Convention on the Privileges and Immunities of the United Nations*, the immunities enjoyed are with respect to: legal process relative to words spoken or written and acts in their official capacity; taxation on salaries and emoluments; national service obligations; immigration, restriction and alien registration (family members enjoy this immunity); and generally, the same immunities as are enjoyed by diplomats of comparable rank. See also the *Convention on the Privileges and Immunities of Specialized Agencies of the UN*.

ii) In *World Health Organization v. Aquino*, 48 SCRA 242, the search warrant issued for alleged violation of customs laws was ordered quashed, as the WHO official was entitled to the privileges and immunities of diplomatic envoys. In *SEAFDEC v. NLRC*, 241 SCRA 580, it was held that SEAFDEC, as an international agency, enjoys immunity from the legal writs and processes of the Philippines, because subjection to local jurisdiction would impair the capacity of such body to discharge its responsibilities impartially in behalf of its member States. In *Callado v. IRRI*, 244 SCRA 211, it was declared that IRRI is immune from suit, because Art. 3, P.D. 1620, grants to IRRI the status, prerogatives, privileges and immunities of an international organization.

iii) In *Lasco v. UNRFNRE*, *supra.*, the Supreme Court pointed to Sec. 31, Convention on the Privileges and Immunities of Specialized Agencies of the UN, which provides the remedy for those who may be adversely affected by these immunities, viz: each specialized agency of the UN shall make a provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of private character to which it is a party.

e) Foreign merchant vessels exercising the right of innocent passage or arrival under stress. *Innocent passage* is navigation through the territorial sea of a State for the purpose of traversing that sea without entering internal waters, or of proceeding to internal waters, or making for the high seas from internal waters, as long as it is not prejudicial to the peace, good order or security of the coastal State. *Arrival under stress*, or involuntary entrance, may be due to lack of provisions, unseaworthiness of the vessel, inclement weather, or other case of *force majeure*, such as pursuit by pirates.

f) Foreign armies passing through or stationed in the territory with the permission of the State.

g) Warships and other public vessels of another State operated for non-commercial purposes. They are generally immune from local jurisdiction under the fiction that they are “floating territory” of the flag State [*Schooner Exchange v. MacFaddon*, 7 *Crandall* 116]. Their crew members are immune from local jurisdiction when on shore duty, but this immunity will not apply if the crew members violate local laws while on furlough or off-duty.

3. *Jurisdiction over land territory.* Save for the exemptions mentioned above, the State exercises jurisdiction over everything found within its terrestrial domain.

4. *Jurisdiction over maritime territory.*

a) Over internal waters. The same jurisdiction as over the land area, since the internal waters are deemed assimilated in the land mass. In the case of foreign merchant vessels docked in a local port or bay, the coastal State exercises jurisdiction in civil matters, but criminal jurisdiction is determined according to the

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i) *English Rule:* The coastal State shall have jurisdiction over all offenses committed on board the vessel except those which do not compromise the peace of the port [applicable in the Philippines; see *U.S. v. Look Chaw*, 18 *Phil* 573; *People v. Wong Cheng*, 46 *Phil* 729]; or

ii) *French Rule*: flag State shall have jurisdiction over all offenses committed on board the vessel except those which compromise the peace of the port.

b) Over archipelagic waters. Same rule as in internal waters, save for innocent passage of merchant vessels through archipelagic sea lanes.

c) Over the territorial sea. Criminal jurisdiction over foreign merchant vessels shall be determined by the application of either the *English Rule* or the *French Rule*. Innocent passage and involuntary entrance are recognized exceptions, provided that in case of involuntary entrance, the distress on the vessel must be real.

d) Over the contiguous zone. As indicated above, under the *UN Convention on the Law of the Sea*, the coastal State may exercise the control necessary to prevent infringement of its customs, fiscal, immigration and sanitary regulations, and punish the said infringement.

e) Over the exclusive economic zone. Under the *UN Convention on the Law of the Sea*, the coastal State has sovereign rights over the exclusive economic zone for purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed, the sub-soil and the superjacent waters, as well as the production of energy from the water, currents and winds. Other States shall have the freedom of navigation and over-flight, to lay submarine cables and pipes, and other lawful uses.

f) Over the continental shelf. The coastal State enjoys the right of exploitation of oil deposits and other resources in the continental shelf. In case the continental shelf extends to the shores of another State, or is shared with another State, the boundary shall be determined in accordance with equitable principles.

g) Over the high seas. Jurisdiction may be exercised by the State on the high seas over the following:

i) *Its vessels*. The flag State has jurisdiction over its public vessels wherever they are, and over its merchant vessels on the high seas. See *The Lotus Case*, *World Ct. Rep.* 20. However, because of the “flags of convenience” controversy, the *UN Convention on the Law of the Sea* concedes that a vessel shall have the nationality of the flag it flies, provided there is a genuine link between the State (whose flag is flown) and the vessel, i.e., the State must effectively exercise jurisdiction and control in administrative, technical and social matters over the ship..

ii) *Pirates.* Pirates are enemies of all mankind; they may be captured on the open seas by the vessels of any State, to whose territory they may be brought for trial and punishment.

iii) *Those engaged in illicit traffic in drugs and slave trade.* All States shall cooperate in the suppression of illicit traffic in narcotics and slave trade. Of late, the same rule should apply with respect to *terrorists*. Likewise, all States shall cooperate in the suppression of unauthorized broadcasting from the high seas, except in case of distress calls.

iv) *In the exercise of the right to visit and search.* Under the laws of neutrality, the public vessels or aircraft of a belligerent State may visit and search any neutral merchant vessel on the open seas and capture it if found to be engaged in activities favorable to the other belligerent.

v) *Under the doctrine of hot pursuit.* If an offense is committed by a foreign merchant vessel within the territorial waters of the coastal State (or if the coastal State has good reason to believe that such an offense had been committed), the said State's vessels (warships, military aircraft, other ships cleared and identifiable as being in government service and authorized to that effect) may pursue the offending vessel into the open seas and, upon capture, bring it back to its territory for punishment. However, to be lawful, the pursuit must have begun before the offending vessel has left the territorial waters or the contiguous zone of the coastal State; the pursuit must be continuous and unabated; and it ceases as soon as the ship being pursued enters the territorial sea of its own, or of a third, State. This right may be exercised with respect to violations committed in the exclusive economic zone or on the continental shelf installations.

5. *Jurisdiction over other territories (extra-territorial jurisdiction).* A State may, by virtue of customary or conventional law, extend its jurisdiction to territory not within its sovereignty in the following cases:

a) Assertion of personal jurisdiction over its national abroad.

b) By virtue of its relations with other States, as when it establishes a *protectorate*, or a *condominium*, or administers trust territory, or occupies enemy territory in the course of war.

c) As a consequence of waiver of jurisdiction by the local State over persons and things within the latter's territory, e.g., foreign army stationed in the local State.

d) Through the principle of exterritoriality, exemption of persons and things from the local jurisdiction on the basis of international custom. Distinguish this from the principle of extra-territoriality, wherein exemption from jurisdiction is based on treaty or convention. The latter principle is discredited.

e) Through the enjoyment of easements and servitudes. See the *Portuguese Enclave Case*, where it was held that Portugal had the right of passage through Indian territory.

6. *The Rome Statute of the International Criminal Court (ICC)*. The Statute was adopted in July, 1998 by a Conference of States in Rome. The Court will come into existence once 60 States have ratified the Statute. The Philippines signed the ICC Statute on 28 December 2000. As of 04 January 2000, 124 countries have signed the Statute, although only 25 have ratified the same.

a) The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with the ICC Statute with respect to the following crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. .

V. RIGHT OF LEGATION

A. *The right of legation*. Also known as the *right of diplomatic intercourse*, this refers to the right of the State to send and receive diplomatic missions, which enables States to carry on friendly intercourse. It is not a natural or inherent right, but exists only by common consent. No legal liability is incurred by the State for refusing to send or receive diplomatic representatives. Governed by the *Vienna Convention on Diplomatic Relations (1961)*.

1. Agents of Diplomatic Intercourse.

a) Head of State. He is the embodiment of, and represents, the sovereignty of the State, and enjoys the right to special protection for his physical safety and the preservation of his honor and reputation. His quarters, archives, property and means of transportation are inviolate under the *principle of exterritoriality*. He is immune from criminal and civil jurisdiction, except when he himself is the plaintiff, and is not subject to tax or exchange or currency restrictions. See *Mighell v. Sultan of Johore, supra..*

b) The Foreign Office. The actual day-to-day conduct of foreign affairs is usually entrusted to a Foreign Office, headed by a Secretary or a Minister, who, in proper cases, may make binding declarations on behalf of his government [*Legal Status of Eastern Greenland*].

2. *Establishment of Resident Missions*. States carry on diplomatic intercourse through permanent missions established in the capitals of other States. The mission is composed of:

a) Head of Mission. The *Vienna Convention* classifies the heads of mission into:

- i) *Ambassadors* or *nuncios* accredited to Heads of State, and other heads of mission of equivalent rank;
- ii) *Envoy*, *ministers* and *internuncios*, accredited to Heads of State; and
- iii) *Charges d'affaires*, accredited to Ministers of Foreign Affairs.

b) Diplomatic Staff, composed of those engaged in diplomatic activities and are accorded diplomatic rank.

c) Administrative and Technical Staff, consisting of those employed in the administrative and technical service of the mission.

d) Service Staff, i.e., those engaged in the domestic service of the mission.

3. *The Diplomatic Corps.* According to custom, all diplomatic envoys accredited to the same State form a body known as the "Diplomatic Corps". The *doyen* or head of this body is usually the Papal Nuncio, if there is one, or the oldest ambassador, or, in the absence of ambassadors, the oldest *minister plenipotentiary*.

4. *Appointment of Envoys.* In the Philippines, it is the President who appoints [Sec. 16, Art. VII, Philippine Constitution], sends and instructs the diplomatic and consular representatives, and his prerogative to determine the assignment of the country's diplomatic representatives cannot be questioned [*De Perio-Santos v. Macaraig, G.R. No. 94070, April 10, 1992*],

a) The sending State is not absolutely free in the choice of its diplomatic representatives, especially heads of mission, because the receiving State has the right to refuse to receive as envoy of another State a person whom it considers unacceptable. To avoid embarrassment, States resort to an informal inquiry [*enquiry*] as to the acceptability of a particular envoy, to which the receiving State responds with an informal conformity [*agreement*]. This informal process is known as *agreement*.

b) With the informal process concluded, the diplomatic mission then commences when the envoy presents himself at the receiving State, generally armed with the following papers: (i) *Lettre de creance* (letter of credence), with the name, rank and general character of the mission, and a request for favorable reception and full credence; (ii) *diplomatic passport* authorizing his travel; (iii) *instructions*, which may include a document of full powers (*pleins pouvoirs*) authorizing him to negotiate on extraordinary or special business; and (iv) *cipher*, or code or secret key, for communications with his country.

5. *Functions and duties.* The main functions of a diplomatic mission are: a) representing the sending State in the receiving State; b) Protecting in the receiving State the interests of the sending State and its nationals, within the limits allowed by international law; c) negotiating with the government of the receiving State; d) ascertaining, by all lawful means, the conditions and developments in the receiving State and reporting these to the sending State; and e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

6. *Diplomatic immunities and privileges.* Except as provided below, the following diplomatic immunities and privileges shall be enjoyed by the envoy

and the members of the *diplomatic retinue*, i.e., the administrative and technical staff.

a) **Personal inviolability.** The person of the diplomatic representative is inviolable; he shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and take all steps to prevent any attack on his person, freedom or dignity. In the Philippines, R.A. 75 punishes, on the basis of reciprocity, any person who assaults, strikes, wounds, offers violence to the person of the ambassador or minister (except if done in selfdefense). The *UN Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons* considers crimes against diplomatic agents as international, not political, in nature. However, the diplomatic envoy may be arrested temporarily in case of urgent danger, such as when he commits an act of violence which makes it necessary to put him under restraint for the purpose of preventing similar acts; but he must be released and sent home in due time.

b) **Inviolability of premises and archives.** The premises occupied by a diplomatic mission, as well as the private residence of the diplomatic agent, are inviolable. The agents of the receiving State may not enter without the consent of the envoy, except in extreme cases of necessity, e.g., when the premises are on fire, or where there is imminent danger that a crime of violence is to be perpetrated in the premises. Such premises cannot be entered or searched, and neither can the goods, records and archives be detained by local authorities even under process of law.

i) The service of writs, summonses, orders or processes within the premises of the mission or residence of the envoy is prohibited. Even if a criminal takes refuge within the premises, the peace officers cannot break into such premises for the purpose of apprehending him. The fugitive should, however, be surrendered upon demand by local authorities, except when the *right of asylum* exists. But if it is the ambassador himself who requests local police assistance, this privilege cannot be invoked [*Fatemi v. U.S.*].

ii) The *Vienna Convention* provides that the receiving State has the special duty to protect diplomatic premises against invasion, damage, or any act tending to disrupt the peace and dignity of the mission. However, in *Reyes v. Bagatsing*, 125 SCRA 553, the Supreme Court held as invalid the denial by the Mayor of the application for a permit to hold a public assembly in front of the U.S. Embassy, there being no showing of a clear and present danger that might arise as a result of such a rally.

iii) The premises of the mission, their furnishings and other property thereon, and the means of transport of the mission shall be immune

from search, requisition, attachment or execution. Inviolability also extends to the archives, documents, papers and correspondence of the mission at all times and wherever they may be, and the receiving State has the duty to respect and protect their confidential character.

iv) Unless the right is recognized by treaty or by local usage, an envoy should not permit the premises of his mission or his residence to be used as a place of *asylum* for fugitives from justice. An envoy may, however, in the interests of humanity, afford temporary shelter to persons in imminent peril of their lives, such as those fleeing from mob violence.

c) Right of official communication. The right of an envoy to communicate with his government fully and freely is universally recognized. The mission may employ all appropriate means to send and receive messages, whether ordinary or in cipher, by any of the usual modes of communication or by means of diplomatic couriers. Because of this right, the *diplomatic pouch* and diplomatic couriers shall also enjoy inviolability.

d) Immunity from local jurisdiction. Under the *1961 Vienna Convention on Diplomatic Relations*, a diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State. Thus, he cannot be arrested, prosecuted and punished for any offense he may commit, unless his immunity is waived. But immunity from jurisdiction does not mean exemption from local law; it does not presuppose a right to violate the laws of the receiving State. Diplomatic privilege does not import immunity from legal liability but only exemption from local jurisdiction [*Dickinson v. Del Solar, 1 K.B. 376*],

i) The diplomatic agent also enjoys immunity from the civil and administrative jurisdiction of the receiving State, and thus, no civil action of any kind may be brought against him, even with respect to matters concerning his private life. As a rule, his properties are not subject to garnishment, seizure for debt, execution and the like, except in the following cases: a) any real action relating to private immovable property situated in the territory of the receiving State, unless the envoy holds it on behalf of the sending State for the purposes of the mission; b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; and c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

ii) This immunity also means that the diplomatic agent cannot be compelled to testify, not even by deposition, without the consent of his government, before any judicial or administrative tribunal in the receiving State.

iii) However, see *Minucher v. Court of Appeals*, G.R. No. 97765, September 24, 1992, where the Supreme Court held that the act of private respondent Drug Enforcement Agent of the U.S. in the frame-up of petitioner was unauthorized and could not be considered performed in the discharge of official functions, despite a belated diplomatic note from the US Embassy; thus, suit against the private respondent was upheld, being a suit against him in his personal and private capacity. See also *Shauf v. Court of Appeals*, 191 SCRA 713, where it was held that the immunity does not protect a public official who commits unauthorized acts, inasmuch as such unauthorized acts are not acts of State. Accordingly, he may be sued for such unlawful acts in his private capacity.

iv) Subject to the rule on reciprocity. Republic Act No. 75 declares as void any writ or process issued out or prosecuted by any person in any court of the Philippines, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign State, authorized and received as such by the President, or any domestic servant of any such ambassador or minister, is arrested or imprisoned, or his goods or chattels distrained, seized or attached; and penalties are imposed for violation of this provision. However, this privilege is not granted to: [a] citizens/inhabitants of the Philippines, where the process is founded upon a debt contracted before his employment in the diplomatic service; and [b] domestic servants of the ambassador or minister whose names are not registered with the Department of Foreign Affairs.

v) As part of the envoy's immunity from local jurisdiction, the children born to him while he possesses diplomatic status are regarded as born in the territory of his home State.

e) Exemption from taxes and customs duties. Under the *Vienna Convention*, diplomatic agents are exempt from all dues and taxes, whether personal or real, national, regional or municipal, except the following: [i] indirect taxes normally incorporated in the price of goods or services; [ii] dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for purposes of the mission; [iii] estate, succession or inheritance taxes levied by the receiving State; [iv] dues and taxes on private income having its source in the receiving State and capital taxes on investments in commercial ventures in the receiving State; [v] charges levied for specific services rendered; and [vi] registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property.

i) The *Vienna Convention* also provides for exemption from all customs duties and taxes of articles for the official use of the mission and those

for the personal use of the envoy or members of the family forming part of his household, including articles intended for his establishment. Baggage and effects are entitled to free entry and, normally, exempt from inspection; articles addressed to ambassadors, ministers, *charge d'affaires* are also exempt from customs inspection.

f) Other privileges, which include freedom of movement and travel in the territory of the receiving State; exemption from all personal services and military obligations; the use of the flag and emblem of the sending State on the diplomatic premises and the residence and means of transport of the head of mission.

7. *Duration of immunities/privileges.* The privileges are enjoyed by the envoy from the moment he enters the territory of the receiving State, and shall cease only the moment he leaves the country, or on expiry of a reasonable time in which to do so; although with respect to official acts, immunity shall continue indefinitely. These privileges are available even *in transitu*, when traveling through a third State on the way to or from the receiving State.

8. *Waiver of immunities.* Diplomatic privileges may be waived, but as a rule, the waiver cannot be made by the individual concerned since such immunities are not personal to him. Waiver may be made only by the government of the sending State if it concerns the immunities of the head of mission; in other cases, the waiver may be made either by the government or by the chief of mission. Waiver of this privilege, however, does not include waiver of the immunity in respect of the execution of judgment; a separate waiver for the latter is necessary.

9. *Termination of diplomatic mission.* The usual modes of terminating official relations, such as death, resignation, removal or abolition of office, will terminate the diplomatic mission. Other modes are *recall* by the sending State, *dismissal* by the receiving State, *war* between the receiving and the sending States, or the *extinction of the State*.

B. *Consular Relations.* *Consuls* are State agents residing abroad for various purposes but mainly in the interest of commerce and navigation.

1. *Kinds of Consuls:*

- a) Consules missi are professional and career consuls, and nationals of the appointing state.
- b) Consules electi are selected by the appointing state either from its own citizens or from among nationals abroad.

2. *Ranks:*

- a) Consul General, who heads several consular districts, or one exceptionally large consular district.
- b) Consul, who takes charge of a small district or town or port
- c) Vice Consul, who assists the consul
- d) Consular agent, who is usually entrusted with the performance of certain functions by the consul.

3. *Appointment.* Two important documents are necessary before the assumption of consular functions, namely:

- a) Letters patent [flettre de provision], which is the letter of appointment or commission which is transmitted by the sending state to the Secretary of Foreign Affairs of the country where the consul is to serve; and
- b) Exequatur, which is the authorization given to the consul by the sovereign of the receiving state, allowing him to exercise his function within the territory.

4. *Functions.* Generally, the functions pertain to commerce and navigation, issuance of *visa* (permit to visit his country), and such as are designed to protect nationals of the appointing state.

5. *Immunities and privileges.* Under the 1963 Vienna Convention on Consular Relations, consuls are allowed freedom of communication in cipher or otherwise; inviolability of archives, but not of the premises where legal processes may be served and arrests made; exempt from local jurisdiction for offenses committed in the discharge of official functions, but not other offenses except minor infractions; exempt from testifying on official communications or on matters pertaining to consular functions; exempt from taxes, customs duties, military or jury service; and may display their national flag and emblem in the consulate.

a) These immunities and privileges are also available to the members of the consular post, their families and their private staff. Waiver of immunities may be made by the appointing state.

6. *Termination of consular mission.* Usual modes of terminating official relationship; withdrawal of the *exequatur*; extinction of the state; war.

a) Severance of consular relations does not necessarily terminate diplomatic relations.

VI. TREATIES

A. Treaty. A treaty is defined as “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 instruments and whatever its particular designation” [*Vienna Convention on the Law of Treaties, 1969*]. It is an agreement between States, including international organizations of States, intended to create legal rights and obligations of the parties thereto. It is the ubiquitous instrument through which all kinds of international transactions are conducted. It is the closest analogy to legislation that international law has to offer. Other names used to designate international agreements besides “treaty”, are “convention”, “pact”, “protocol”, “agreement”, “arrangement”, “accord”, “final act”, “general act” and “exchange of notes”. An *executive agreement* may, within the context of municipal law, not be considered as a treaty [*Commissioner of Customs v. Eastern Sea Trading, 3 SCRA 351*], but from the standpoint of international law, they are equally binding as treaties. In the case concerning maritime delimitation and territorial questions between Qatar and Bahrain [*Qatar v. Bahrain, Jurisdiction, First Phase, ICJ Rep. 1994 112*], the ICJ ruled that Minutes to a meeting and exchange of letters constitute an international agreement creating rights and obligations for the parties.

1. *Form.* Under Art. 2, 1969 *Vienna Convention on the Law of Treaties*, treaties should be in writing; but under Art. 3 thereof, the fact that a treaty is unwritten shall not affect its legal force, but that convention rules on matters governed by international law independently of convention shall apply and that convention rules shall apply to the relations of the States among themselves.

a) The 1969 Vienna Convention on the Law of Treaties covers only treaties executed between States. It is the 1986 *Vienna Convention on Treaties for International Organizations* which applies to treaties executed between States and International Organizations.

2. *Requisites for validity.*

a) Treaty-making capacity. Every State possesses the capacity to conclude treaties, as an attribute of sovereignty. Under customary international law, international organizations are deemed to possess treaty-making capacity, although such capacity may be limited by the purpose and the constitution of such organizations.

b) Competence of the representative/oraan concluding the treaty. Generally, the Head of State exercises the treaty-making power. In the Philippines, it is the President who exercises the power, subject to concurrence by 2/3 of all the members of the Senate.

c) Parties must freely give consent: the consent of a State may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by other means manifesting consent. Where the consent of a party has been given in error or induced through fraud on the party of the other, the treaty is *voidable*. Where the consent of the State is obtained through the corruption of its representative by another negotiating State, the former may invoke such corruption in invalidating its consent to be bound by the treaty.

i) *Doctrine of Unequal Treaties*. Treaties which have been imposed (through coercion or duress) by a State of unequal character, is *void*.

d) Object and subject matter must be lawful, within the commerce of nations and in conformity with international law. However, the object is deemed illegal only when it contravenes or departs from an absolute or imperative rule or prohibition of international law.

i) *Doctrine of jus cogens*. Customary international law has the status of a peremptory norm of international law, accepted and recognized by the international community of states as a rule from which no derogation is permitted. Accordingly, a treaty whose provisions contravene such norms/rules may be invalidated. See *Human Rights Cases v. Marcos*, where it was held that official torture of prisoners or dissenters is a violation of the principle of *jus cogens*.

■ e) Ratification in accordance with constitutional processes of the parties concerned. Sec. 21, Art. VII, *Philippine Constitution*, provides: "No treaty or international agreement shall be valid and effective unless concurred in by at least 2/3 of all the members of the Senate".

3. *Treaties and Executive Agreements*. In *Commissioner of Customs v. Eastern Sea Trading, supra.*, the Supreme Court held that treaties (which will require Senate concurrence for validity) generally refer to basic political issues, changes in national policy and permanent international arrangements; while executive agreements (which do not require such concurrence) refer to adjustments of detail carrying out well-established national policies, and temporary arrangements. See *USAFFE Veterans v. Treasurer of the Philippines*, where the Court held that the Romulo-Snyder Agreement, involving a loan of \$35M, was a purely executive act which the President may validly enter into by virtue of the authority granted to him under existing law.

a) In *Bayan v. Executive Secretary, G.R. No. 138570, October 10, 2000*, the Supreme Court held that the Visiting Forces Agreement (VFA)

is constitutional, having been duly concurred in by the Philippine Senate. The Republic of the Philippines cannot require the United States to submit the agreement to the US Senate for concurrence, for that would be giving a strict construction to the phrase “recognized as a treaty”. Moreover, it is inconsequential that the US treats the VFA as merely an executive agreement because, under international law, an executive agreement is just as binding as a treaty.

b) Under Memorandum Circular No. 89, Office of the President, it is provided that, in case there is a dispute as to whether or not an international agreement is purely an executive agreement, the matter is referred to the Secretary of Foreign Affairs who will then seek the comments of the Senate Representative and the legal adviser of the Department, and after consultation with the Senate leadership, the Secretary of Foreign Affairs shall then, on the basis of his findings, make the appropriate recommendation to the President.

c) *Exchange of Notes.* An “exchange of notes” is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. The usual procedure is for the accepting State to repeat the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or department heads. The technique of exchange of notes is frequently resorted to either because of its speedy procedure, or sometimes, to avoid the process of legislative approval [*Abaya v. Ebdane, G.R.No. 167919, February 14, 2007*],

4. *Treaty-making Process.* The usual steps in the treaty-making process are: *negotiation, signature, ratification, and exchange of instruments of ratification.*

a) Negotiation. The representatives of the parties are usually armed with credentials known as *pleine pouvoirs*, or full powers, which is a document emanating from competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, expressing the State’s consent to be bound by a treaty, or accomplishing any other act with respect to a treaty. However, even without such full powers, it has been the general practice to consider the following as representatives of the State for treaty negotiation: the Head of State, Head of Government, the Foreign Minister [as in the *East Greenland Case*, where the Ihlen declaration recognizing the Danish claim was held binding on Norway]; the head of diplomatic missions (in treaties between his State and the receiving State); and the representative accredited by the State to an

international conference or to an international organization (to adopt the text of a treaty in that conference or organization).

i) While the final text of the Japan-Philippines Economic Package Agreement (JPEPA) may not be kept perpetually confidential, the offers exchanged by the parties during negotiations continue to be privileged even after the JPEPA is published. It is reasonable to conclude that the Japanese representatives submitted their offers with the understanding that "historic confidentiality" would govern the same. Disclosing these offers could impair the ability of the Philippines to deal not only with Japan but with other foreign governments in future negotiations [*AKBAYAN v. Aquino, G.R. No. 170516, July 16, 2008*].

b) Signing of the treaty. The principle of *alternat* is observed, according to which the order of the naming of the parties and of the signatures of the plenipotentiaries is varied so that each party is named and its plenipotentiary signs first in the copy of the instrument to be kept by it.

c) Ratification. The act by which the provisions of a treaty are formally confirmed and approved by a State, and by which the State expresses its willingness to be bound by the treaty.

i) In the Philippines, the power to ratify a treaty is vested in the President, subject to concurrence by 2/3 of all the members of the Senate [*Sec. 21, Art. VII, Philippine Constitution*], In *Pimentel v. Office of the Executive Secretary, G.R. No. 158088, July 6, 2005*, the Supreme Court said that in our system of government, the President, being the head of State, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations. As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. The President is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations. Thus, the President has the discretion, even after the signing of the treaty by the Philippine representative, whether or not to ratify the same. Accordingly, without the President's consent, the Executive Secretary and the Secretary of Foreign Affairs may not be compelled by *mandamus* to transmit a copy of the Rome Statute signed by a member of the Philippine mission to the UN to the Senate for concurrence.

ii) Accession. Also known as "adhesion", this is the process by which a non-signatory State becomes a party to a treaty. Thus, upon invitation or permission of the contracting parties, a third party who did not participate or who did not ratify on time, may be bound by a treaty

iii) *Reservation.* A unilateral statement, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State. The State making the reservation remains a party to the treaty, provided that the reservation is compatible with the object and purpose of the treaty;

d) *Entry into force.* A treaty enters into force in such manner and on such date as it may provide, or as the negotiating parties may agree. In the absence of such a provision, the treaty enters into force as soon as the consent of all the parties to be bound by the treaty is established.

i) *Exchange of instruments of ratification.* Consent is deemed established with the exchange of the instruments of ratification, acceptance, approval or accession; or, if the treaty so provides, upon deposit of such instruments with a named depositary, coupled with the notification to the contracting States of such deposit.

ii) *Registration with and publication by the United Nations.* Art. 102 of the Charter of the United Nations requires that every treaty and international agreement entered into by any member of the UN should be registered as soon as possible with the Secretariat and published by it. Failure to register would not, however, affect the validity of the treaty; however, the unregistered instrument cannot be invoked by any party thereto before any organ of the United Nations.

5. *When non-signatories may be bound by a treaty.* As a rule, treaties cannot impose obligations upon States not parties to them. *Pacta tertiis nocent nec prosunt.* However, as mentioned above, through the process of *accession* or *adhesion*, States not originally parties to the agreement may become bound. Other States may also be bound by the terms of a treaty if linked by the *most favored nation clause*, under which a contracting State entitled to the clause may claim the benefits extended by the latter to another State in a separate agreement. Likewise, if the treaty is merely a formal expression of customary international law, or where the treaty expressly extends benefits to non-signatory States.

6. *Fundamental principles concerning treaties.*

a) *Pacta sunt servanda*, which requires that treaties must be observed in good faith. If necessary, the State concerned must even modify its national legislation and constitution to make them conform to the treaty, in order to avoid international embarrassment. In the Philippines, however, treaties may be declared invalid if contrary to the Constitution.

i) In *Tanada v. Angara*, 272 SCRA 18, the Supreme Court ruled that treaties do indeed limit or restrict the sovereignty of a State. By their voluntary act, States may surrender some aspects of their power in exchange for greater benefits granted by or derived from a convention or pact. Under the rule of *pacta sunt servanda*, a State is bound to make such modifications in its laws as may be necessary to ensure the fulfillment of the obligations undertaken under the treaty.

b) *Rebus sic stantibus*, which means that a contracting State's obligations under a treaty terminates when a vital or fundamental change of circumstances occurs, thus allowing a State to unilaterally withdraw from a treaty, because of the "disappearance of the foundation upon which it rests". In *Santos III v. Northwest Orient Airlines*, 210 SCRA 256, the Supreme Court ruled that this doctrine does not operate automatically. There is a necessity for a formal act of rejection, usually by the Head of State, with the statement of the reasons why compliance with the treaty is no longer required. Thus, the contention that the Warsaw Convention (of 1933, to which the Philippines acceded in 1950 and became bound thereby on February 9, 1951) should not apply because of the change in present circumstances as compared with the 1933 situation, is not tenable. The requisites for valid invocation of this principle are:

- i) The change must be so substantial that the foundation of the treaty must have altogether disappeared;
- ii) The change must have been unforeseen or unforeseeable at the time of the perfection of the treaty;
- iii) The change must not have been caused by the party invoking the doctrine;
- iv) The doctrine must be invoked within a reasonable time;
- v) The duration of the treaty must be indefinite; and
- vi) The doctrine cannot operate retroactively, i.e., it must not adversely affect provisions which have already been complied with prior to the vital change in the situation.

7. *Interpretation of Treaties.* A treaty shall be interpreted in good faith, in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its objects and purposes. To be considered in the interpretation are its text, preamble, annexes, as well as other agreements relating to the treaty and subsequent agreements entered into by the contracting parties.

8. *Amendment/Modification.* To amend or modify provisions of the treaty, the consent of all the parties is required. However, if allowed by the treaty itself, two States may modify a provision only insofar as they are concerned.

9. *Termination of treaties.* The following are among the grounds/causes for termination of treaties:

- a) Expiration of the term, or withdrawal of a party in accordance with the treaty.
- b) Extinction of one of the parties to the treaty (in case of bipartite treaties), when the rights and obligations under the treaty would not devolve upon the State that may succeed the extinct State.
- c) Mutual agreement of all the parties.
- d) Denunciation or desistance by one of the parties. The right to give notice of termination or withdrawal is known as the *right of denunciation*.
- e) Supervening impossibility of performance.
- f) Conclusion of a subsequent inconsistent treaty between the parties.
- g) Loss of the subject matter.
- h) Material breach or violation of the treaty.
- i) The application of the doctrine of *rebus sic stantibus*.
- j) The outbreak of war between the parties, unless the treaty precisely relates to the conduct of the war.
- k) Severance of diplomatic relations, only if the existence of such relationship is indispensable for the application of the treaty.
- l) The doctrine of *jus cogens*, or the emergence of a new peremptory norm of general international law which renders void any existing treaty conflicting with such norm.

VII. NATIONALITY AND STATELESSNESS

A, *Nationality*. Membership in a political community with its concomitant rights and duties.

1. *Determination of a person's nationality*. The 1930 Hague Convention on Conflict of Nationality Laws states:

a) It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality.

b) Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

2. *Acquisition of nationality*. The modes of acquiring nationality are:

a) Birth. The two principles on acquisition of nationality by birth are: i) *jus sanguinis*, i.e., by blood; and ii) *jus soli*, i.e., by place of birth.

b) Naturalization. This mode may be accomplished through marriage, legitimization, option (election), acquisition of domicile, appointment to government office, or grant on application. In the Philippines, naturalization may be by judicial process, legislative process, election or marriage *Moy Ya Lim Yao v. Commissioner of Immigration*, 41 SCR A 292].

i) However, there is no obligation on the part of the State of his nationality to recognize a person's newly acquired nationality. Municipal law may even prohibit the renunciation of one's nationality under certain circumstances, as in the application of the *doctrine of indelible allegiance*. An example is Commonwealth Act No. 63 which provides that one of the modes of losing Philippine citizenship is by subscribing to an oath of allegiance to support the Constitution or the laws of a foreign country, but a Filipino may not divest himself of Philippine citizenship in this manner while the Republic of the Philippines is at war with any country. See also *Joyce v. Director of Public Prosecution*. House of Lords, December 18, 1945.

c) Repatriation. Recovery of nationality by individuals who were natural-born citizens of a State but who had lost their nationality. Read Republic Act No. 8171, which governs repatriation of Filipino women who

have lost Filipino citizenship by reason of marriage to aliens, as well as the repatriation of former natural-born Filipinos who lost Filipino citizenship.

- d) Subjugation.
- e) Cession.

3. *Loss of nationality.* Nationality is lost by any of the following modes: i) release, e.g., Germany gives its citizens the right to ask for release from their nationality; ii) deprivation, e.g., Philippines, which deprives its citizens of nationality upon entry into the military service of another State [C.A. No. 63]; iii) renunciation, exemplified in C. A. No. 63; and iv) substitution, such as what happens when the former nationality is lost *ipso facto* by naturalization abroad.

B. *Multiple Nationality.* A person may find himself possessed of more than one nationality because of the concurrent application to him of the municipal laws of two or more States claiming him as their national. This may arise by the concurrent application of the principles of *jus sanguinis* and *jus soli*, naturalization without renunciation of the original nationality, legitimation, or legislative action.

1. *Policy in the Philippines:* "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law" [Sec. 5, Art. IV, *Philippine Constitution*], See Aznarv. Comelec, *supra*.

2. *Resolution of Conflicts in Multiple Nationality Cases.* The 1930 Hague Convention on the Conflict of Nationality Laws provides the following solutions to multiple nationality cases:

a) A person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses, and a State may not give diplomatic protection to one of its nationals against a State whose nationality that person possesses. See the *Nottenbohm Case*, *ICJ Reports*, 1955.

b) If a person has more than one nationality, he shall, within a third State, be treated as if he had only one; the third State shall recognize exclusively either the nationality of the State in which he is habitually and principally resident, or the nationality of the State with which he appears in fact to be most closely connected. This is known as the *principle of effective nationality*.

c) If a person, without any voluntary act of his own, possesses double nationality, he may renounce one of them with the permission of the State whose nationality he wishes to surrender and, subject to the laws of the State concerned, such permission shall not be refused if that person has his habitual residence abroad.

C. Philippine Laws on Citizenship. See CONSTITUTIONAL LAW, **Chapter VII** on **Citizenship.**

D. Stateless. The status of having no nationality, as a consequence of being born without any nationality, or as a result of deprivation or loss of nationality. See *Labo v. Comelec*, 176 SCRA 1.

1. In 1954, under the auspices of the United Nations, twenty-two countries (including the Philippines) concluded a *Convention Relating to the Status of Stateless Persons*, under which the contracting States agreed to grant to stateless persons within their territories treatment at least as favorable as that accorded to their nationals with respect to: [a] freedom to practice their religion and freedom as regards the religious education of their children; [b] access to the courts of law; [c] rationing of products in short supply; [d] elementary education; [e] public relief and assistance; and [f] labor legislation and social security.

2. In that convention, the contracting States also agreed to accord stateless persons lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, relative to: [a] acquisition of movable and immovable property; [b] right of association in non-political and non-profitmaking associations and trade unions; [c] gainful employment and practice of liberal professions; [d] housing and public education other than elementary education; and [e] freedom of movement.

E. Refugees. See next chapter.

VIII. TREATMENT OF ALIENS

A. *General Rule.* Flowing from its right to existence and as an attribute of sovereignty, no State is under obligation to admit aliens. The State can determine in what cases and under what conditions it may admit aliens.

1. This right includes the power to regulate the entry and stay of aliens, and the State has the right to expel aliens from its territory through *deportation* or *reconduction*.

a) Expulsion or deportation may be predicated on the ground that the stay of the alien constitutes a menace to the security of the State or that his entry was illegal, or that permission to stay has expired, or that he has violated any limitation or condition prescribed for his admission and continued stay.

b) Reconduction is the forcible conveying of aliens back to their home State. Thus, destitute aliens, vagabonds, aliens without documents, alien criminals, and the like, may be arrested and reconducted to the frontier without any formalities. And the home State of such aliens has the obligation to receive them.

2. The alien must accept the institutions of the State as he finds them. Accordingly, the alien may be deprived of certain rights, e.g., political rights, acquisition of lands, etc. However, local laws may grant him certain rights and privileges based on [a] reciprocity; [b] most-favored-nation treatment; or [c] national treatment, i.e., equality between nationals and aliens in certain matters, such as in entitlements to due process of law, etc. But these privileges conferred may be revoked, subject to treaty stipulations.

B. *Doctrine of State Responsibility.* A State is under obligation to make reparations to another State for the failure to fulfill its primary obligation to afford, in accordance with international law, the proper protection due to the alien national of the latter State. The State may, therefore, be held liable for injuries and damages sustained by the alien while in the territory of the State if:

1. *The act or omission constitutes an international delinquency.* The treatment of the alien should amount to an outrage, to bad faith, willful neglect of duty, or insufficiency of governmental action, such that every reasonable and impartial man would readily recognize its insufficiency or inadequacy.

a) International Standard of Justice. The standard of the "reasonable State", which means reasonable according to ordinary means and notions

accepted in modern civilization. Execution of an alien without trial is considered as falling below the international standard of justice.

i) Where the laws of the State fall below the international standard, it is no defense that such laws are applicable not only to aliens but to nationals, as well. In such a case, the *doctrine of equality of treatment* does not apply.

ii) The independence of the courts of the State is an accepted canon of civilized governments, and unless the misconduct is extremely gross, the law does not lightly hold a State responsible for any error committed by the Courts, e.g., Flor Contemplacion case.

2. *The act or omission is directly or indirectly imputable to the State*, Even when the laws of the State conform to the international standard of justice, the act or omission causing damage to the alien may be indirectly imputable to the State if the latter does not make reasonable efforts to prevent injury to the alien, or having done so unsuccessfully, fails to repair such injury. The act or omission which will give rise to liability may either be:

a) Acts of Government Officials. Acts of primary agents of the State, e.g., head of State are 'acts of State", which will give rise to direct state responsibility. Acts of high administrative officials within the sense of their authority are also acts of State which could give rise to liability. Where the officer acts beyond the scope of his authority, his act is likened to an act of a private individual. For acts of a minor or subordinator official to give rise to liability, there must be a denial of justice or something which indicates complicity of the State in. or condonation of, the original wrongful act, such as an omission to take disciplinary action against the wrongdoer.

b) Acts of private individuals. For the State to be held responsible, it must be shown that there was actual or tacit complicity of the government in the act, before or after it, either by directly ratifying or approving it, or in the patent or manifest negligence in taking measures to prevent injury, investigate the case, punish the guilty, or to enable the victim to pursue his civil remedies against the offender. The claimant has the burden of proving such negligence.

3. *Injury to the claimant State indirectly because of damage to its national,*

C. Enforcement of Alien's Claim.

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1. *Exhaustion of local remedies*. Alien must first exhaust all available local remedies for the protection or vindication of his rights, because the State

must be given an opportunity to do justice in its own regular way and without unwarranted interference with its sovereignty by other states.

a) This requirement may be dispensed with if there are no remedies to exhaust (as where the laws are intrinsically defective), or where the courts are corrupt, or where there is no adequate machinery for the administration of justice, or where the international delinquency results from an "act of state."

b) The Calvo Clause. A stipulation by which an alien waives or restricts his right to appeal to his own state in connection with any claim arising from the contract and agrees to limit himself to the remedies available under the laws of the local state.

i) This cannot be interpreted to deprive the alien's state of the right to protect or vindicate his interests in case they are injured in another state, as such waiver can legally be made not by the alien but by his own state. [See: US (*North American Dredging Co.*) v. Mexico, *General Claims Commission*, 1926.]

2. *Resort to diplomatic protection*± After the alien has exhausted all available local remedies without success, he must avail himself of the assistance of his state.

a) The tie of nationality must exist from the time of the injury until the time the international claim is finally settled.

b) The UN may file a diplomatic claim on behalf of its officials [*Count Foike Bernadotte*, 1949 I.C.J. Rep. 147]; and the European Commission on Human Rights and also contracting states other than the state of the injured individual may bring alleged infractions of the European Convention on Human Rights before the European Court of Human Rights.

3. *Modes of Enforcement of Claims*. Through negotiation, or if this fails, any of the other methods of settling disputes, like good offices, arbitration or judicial settlement.

a) When the responsibility of the State is established, the duty to make reparation will arise. Reparation may take the form of restitution, or where this is not possible, satisfaction or compensation, or all three of these together.

D. *Extradition*. The surrender of a person by one state to another state where he is wanted for prosecution or, if already convicted, for punishment.

1. *Basis of Extradition*: a treaty. In the absence of a treaty, the local state may grant asylum to the fugitive; or, if surrender is made, the same is merely a gesture of comity.

2. *Distinguished from Deportation*. Extradition is the surrender of a fugitive by one state to another where he is wanted for prosecution or, if already convicted, for punishment. The surrender is made at the request of the latter state on the basis of an extradition treaty. Deportation is the expulsion of an alien who is considered undesirable by the local state, usually but not necessarily to his own state. Deportation is the unilateral act of the local state and is made in its own interests.

3. *Fundamental principles*:

a) Based on consent, as expressed in a treaty or manifested as an act of goodwill.

b) Under the principle of specialty, a fugitive who is extradited may be tried only for the crime specified in the request for extradition and included in the list of offenses in the extradition treaty. The state of refuge has the right to object to a violation of this principle.

i) “*Non-list*” types of *extradition treaties*. Offenses punishable under the laws of both states by imprisonment of one year or more are included among the extraditable offenses.

c) Any person may be extradited, whether he is a national of the requesting state, of the state of refuge or of another state.

d) Political and religious offenders are generally not subject to extradition.

i) In order to constitute an offense of a “political character” there must be two or more parties in the state, each seeking to impose the government of their own choice on the other.

ii) Under the *attentat clause*, the murder of the head of state or any member of his family is not to be regarded as a political offense. Neither is *genocide*.

e) In the absence of special agreement, the offense must have been committed within the territory or against the interests of the demanding state.

f) The act for which the extradition is sought must be punishable in both the requesting and requested states. This is known as the rule of double criminality.

4. Procedure for Extradition.

a) Request, accompanied by the necessary papers relative to the identity of the wanted person and the crime alleged to have been committed or of which he has already been convicted, made through diplomatic channels to the state of refuge.

b) Upon receipt of the request, state of refuge will conduct a judicial investigation to ascertain if the crime is covered by the extradition treaty and if there is a *prima facie* case against the fugitive according to its own laws. If there is, a warrant of surrender will be drawn and fugitive delivered to the state of refuge.

i) In *Government of Hongkong v. Hon. Felixberto T. Olalia, Jr., G.R. No. 153675, April 19, 2007*, the Supreme Court modified its earlier ruling (*in Government of the U.S. v. Purganan*) that the constitutional right to bail does not apply to extradition proceedings. The Court said that it cannot ignore the modern trend in public international law which places primacy on the worth of the individual person and the sanctity of human rights. While the Universal Declaration of Human Rights (which proclaims the right to life, liberty and all the other fundamental rights of every person) is not a treaty, the principles contained therein are now recognized as customarily binding on all members of the international community. If bail can be granted in deportation cases, considering that the Universal Declaration of Human Rights applies to deportation cases, there is no reason why it cannot be invoked in extradition cases. After all, both are administrative proceedings where the innocence or guilt of the person detained is not in issue.

ii) However, the standard to be used in granting bail in extradition cases should be “clear and convincing evidence”, which is lower than proof beyond reasonable doubt but higher than preponderance of evidence. It is imperative that the potential extradite must prove by “clear and convincing evidence” that he is not a flight risk and will abide with all the orders and processes of the extradition court [*Government of Hongkong, supra*.].

Note: Abduction of the fugitive in the state of refuge is not allowed, as it constitutes a violation of the territorial integrity of the state of refuge. But if the abduction is effected with the help of the nationals of the state of refuge itself, then the state of refuge cannot later demand the return of the fugitive. See: *Savarkar Case*.]

5. *RP's Extradition Treaties.* The Philippines has concluded extradition treaties with Indonesia (1976), Australia (1988), Canada (1989), Switzerland (1989) and Micronesia (1990). All these treaties follow the "non-list" type of *double criminality* approach, where there is no traditional listing of crimes, as this could lead to difficulties where the countries denominate crimes differently.

D. *Letters Rogatory.* A formal communication from a court in which an action is pending, to a foreign court, requesting that the testimony of a witness residing in such foreign jurisdiction be taken under the direction of the court, addressed and transmitted to the court making the request.

1. *Sec. 12, Rule 24 of the Rules of Court of the Philippines,* provides for this. The power to issue "letters rogatory" is inherent in the courts of justice.

F. *Asylum.* The power of the state to allow an alien who has sought refuge from prosecution or persecution to remain within the territory and under its protection. This has never been recognized as a principle of international law.

1. *Principles on Asylum.*

a) Territorial asylum. Exists only when stipulated in a treaty or justified by established usage. May depend on the liberal attitude of the receiving state, on grounds of "territorial supremacy".

b) Diplomatic asylum. Granted only if stipulated in a treaty, or where established usage allows it, but within "narrowest limits" or when the life or liberty of the person is threatened by imminent violence.

2. *Rule in the Philippines.* Generally, diplomatic asylum cannot be granted except to members of the official or personal household of diplomatic representatives. On humanitarian grounds, however, refuge may be granted to fugitives whose lives are in imminent danger from mob violence but only during the period when active danger persists. See: *Case of Alfredo B. Saulo; Haya dela Torre, ICJ Reports, 1950, p. 274.*

G. *Refugees.* A refugee is any person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of prosecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or if he has no nationality, to return to the country of his former habitual residence.

1. *Essential elements:* [a] outside the country of his nationality, or if stateless, outside the country of his habitual residence; [b] lacks national protection; and [c] fears persecution.
2. *A refugee is treated as a stateless individual*, which he is, either *de jure* or *de facto*.
3. The Refugee Convention of 1951 does not deal with admission, but with *non-refoulement*, i.e., that no contracting state shall expel or return a refugee in any manner whatsoever, to the frontiers of territories where his life or freedom is threatened. The state is under obligation to grant temporary asylum to refugees.

IX. SETTLEMENT OF DISPUTES

A. *International Dispute.* An actual disagreement between States regarding the conduct to be taken by one of them for the protection or vindication of the interests of the other. A situation is the *initial stage* of a dispute.

B. *Pacific or amicable modes.* Article 3 of the UN Charter provides that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements*, or other peaceful means of their own choice.

1. *Negotiation.* The process by which States settle their differences through an exchange of views between diplomatic agencies.

2. *Enquiry.* Ascertainment of the pertinent facts and issues in a dispute.

3. *Tender of good offices.* Where a third party, either alone or in collaboration with others, offers to help in the settlement of a dispute. When the offer is accepted, there is supposed to be an “exercise of good offices”.

4. *Mediation±* A third party offers to help with a solution, usually based on a compromise. Distinguished from good offices in that mediation offers a solution; good offices merely brings the parties together.

5. *Conciliation..* Active participation of a third party, whose services are solicited by the disputants, in the effort to settle the conflict; but the conciliator's recommendations are not binding.

6. *Arbitration.* The solution of a dispute by an impartial third party, usually a tribunal created by the parties themselves under a charter known as a *compromis*.

7. *Judicial settlement* Similar to arbitration in the nature of the proceedings and in the binding character of the award. This differs from arbitration viz: in judicial settlement, the judicial body is pre-existing while in arbitration, the arbitrary body is *ad hoc*; jurisdiction in judicial settlement is usually compulsory, and the law applied by the judicial tribunal is independent of the will of the parties. The judicial settlement of the international disputes is now lodged in the *International Court of Justice*.

a) The optional jurisdiction clause. Although the ICJ's jurisdiction is based on the consent of the parties, nonetheless, Art. 36 of the Statute of the International Court of Justice provides that the states/parties to the Statute recognize the jurisdiction of the Court over disputes concerning interpretation of a treaty, any question of international law, the existence of any fact which would constitute a breach of international obligations, and the nature or extent of the reparation to be made for such breach.

8. *Resort to regional organizations*. The parties may, of their own volition, or at the instance of the organization itself, assume the obligation of settling the dispute.'

C. *Hostile methods*. Where the pacific methods of settlement have failed, states sometimes find it necessary to resort to hostile methods, which may be *severance of diplomatic relations, retorsion, reprisal or intervention*.

1. *Severance of diplomatic relations*

2. *Retorsion*. Unfriendly, but lawful, coercive acts done in retaliation for unfair treatment and acts of discrimination of another state, e.g., the levy of high discriminatory tariffs on goods coming from the other state.

3. *Reprisal*. Unfriendly and unlawful acts in retaliation for reciprocal unlawful acts of another state. Reprisal may take the form of:

a) Freezing of the assets of the nationals of the other state.

b) Embargo: the forcible detention or sequestration of the vessels and other property of the offending state.

c) Pacific blockade: the prevention of entry to or exit from the ports of the offending state of means of communication and transportation. [Note, however, that this could be violative of the UN Charter]

d) Non-intercourse: suspension of all intercourse with the offending state, particularly in matters of trade and commerce.

e) Boycott: concerted suspension of commercial relations with the offending state, with particular reference to a refusal to purchase goods.

D. *Role of the United Nations*. Where none of the above-mentioned methods succeeds in settling the dispute, the United Nations may be asked or may decide on its own authority to take a hand in the settlement. This task

is principally addressed to the Security Council, but may be taken over by the General Assembly under certain conditions.

1. *The Security Council.* The Security Council shall have jurisdiction to intervene in all disputes affecting international peace and security, and in all disputes which, although coming under the *domestic jurisdiction clause*, have been submitted to it by the parties for settlement. Such disputes may be brought to it by the Security Council itself, the General Assembly, the Secretary General, any member of the UN, or any party to the dispute.

a) The Security Council will recommend appropriate measures, considering any amicable measures already adopted by the parties, or that the dispute should be referred to the International Court of Justice.

b) If these should prove unsuccessful, the Security Council itself may recommend such terms of settlement as it may deem appropriate.

c) If the terms of settlement are rejected, then the Security Council may take:

i) *Preventive action:* such measures not involving the use of armed force, such as complete or partial interruption of economic relations, and of rail, sea, air, postal, telegraphic, radio or other means of communications, and severance of diplomatic relations; or if these measures are still inadequate.

ii) *Enforcement action:* action by air, sea or land forces as may be necessary to maintain or restore international peace and security, including demonstrations, blockades and other operations by air, sea or land forces of members of the UN. [Note that a member state is obliged to render assistance in carrying out the measures decided upon by the Security Council.]

2. *The General Assembly.* Under the *Uniting for Peace Resolution*, adopted in 1950, if the Security Council, because of lack of unanimity, fails to exercise its primary responsibility to maintain peace and security, the General Assembly shall consider the matter immediately, with a view to making recommendations to the members for collective measures, *including the use of armed forces when necessary.* .

X. WAR AND NEUTRALITY

A. *War.* War is the contention between two states, through their armed forces, for the purpose of overpowering the other and imposing such conditions of peace as the victor pleases. War does not mean the mere employment of force; if a nation declares war against another, war exists, though no force has yet been used. On the other hand, in case of reprisal, force may already be used, but no state of war may yet exist.

1. *Outlawry of War.* Condemnation of war on an international scale.

a) Covenant of the League of Nations, which provided conditions for the right to go to war.

b) 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."

c) Charter of the United Nations, Article 2 of which prohibits the threat or use of force against the territorial integrity or political independence of a state.

2. *Commencement of War.* War is commenced (a) with a declaration of war (Hague Convention of 1907); (b) with the rejection of an ultimatum (Hague Convention); or (c) with the commission of an act of force regarded by one of the belligerents as an act of war.

3. *Effects of Outbreak of War.*

a) The laws of peace cease to regulate the relations between the belligerents and are superseded by the laws of war; while third states are governed by the laws of neutrality in their dealings with the belligerents.

b) Diplomatic and consular relations are terminated, and their respective representatives are allowed to return to their own countries.

c) Treaties of a political nature are automatically canceled, except those intended to operate during the war. Multipartite treaties dealing with technical or administrative matters, like postal conventions, are merely suspended as between the belligerents. See: *Techt v. Hughes*, 229 NY 222, where the plaintiff, a US citizen who had become the wife of an Austrian, was allowed to inherit from her father's estate pursuant to the treaty between Austria and the US.

d) Individuals are impressed with enemy character; (i) under the *nationality test*, if they are nationals of the other belligerent, wherever they may

be; (ii) under the *domiciliary test*, if they are domiciled aliens in the territory of the other belligerent on the assumption that they contribute to its economic resources; (iii) under the *activities test*, if, being foreigners, they participate in the hostilities in favor of the other belligerent.

e) Corporations and other juridical persons are considered enemies where the controlling stockholders are nationals of the other belligerent, or if incorporated in the territory or under the laws of the other belligerent, and may not be allowed to continue operations. See: *Filipinas Compania de Seguros v. Christern Huenfeld*, 89 Phil. 54, where the respondent corporation, controlled by German citizens, although organized in the Philippines, became an enemy corporation upon the outbreak of the war, and thus could not recover under an insurance policy. Also, *Haw Pia v. China Banking Corporation*, 80 Phil 604, where payment made by Haw Pia to the Bank of Taiwan during the Japanese occupation, the latter having been authorized by the Japanese Military Administration to liquidate the assets of all enemy banks (including China Banking), was valid, and extinguished Haw Pia's obligation to China Banking.

f) Enemy public property found in the territory of the other belligerent at the outbreak of the war is subject to confiscation, private property is subject to requisition (sequestration; private property at sea may be confiscated, subject to certain exceptions. See: *Brownell v. Bautista*, 95 Phil. 853; the State may, in time of war, authorize and provide for seizure and sequestration, through executive channels, of properties believed to be enemy-owned, if adequate provision is made for their return in case of mistake.

4. *Participants in War.* Combatants: those who engage directly in the hostilities, and non-combatants: those who do not, such as women and children..

a) Combatants may be:

i) *Non-privileged*, like spies who, under false pretenses try to obtain vital information from the enemy ranks and who, when caught, are not considered *prisoners of war*.

ii) *Privileged* who, when captured, enjoy the privileges of *prisoners of war*. Among them are: [a] Regular armed forces; [b] Ancillary services, like doctors and chaplains; [c] Those who accompany the armed forces, like war correspondents; [d] *Levees en masse*: inhabitants of unoccupied territory who, on approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves, provided they

carry arms openly and observe the laws and customs of war; [e] *Franc tireurs*, or guerrillas, provided they are commanded by a person responsible for his subordinates, wear a fixed distinctive emblem recognizable at a distance, carry their arms openly, and conduct their operations according to the laws and customs of war; and [f] Officers and crew of merchant vessels who forcibly resist attack. ,

iia) Rights of prisoners of war. Under the 1949 Geneva Convention, they are to be treated humanely, not subject to torture, allowed to communicate with their families, receive food, clothing, religious articles, etc.

b) Spies. An individual is deemed a spy only if, acting clandestinely or under false pretenses, he obtains or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. When captured, may be proceeded against under the municipal law of the other belligerent, although under the Hague Convention, may not be executed without a trial. But if captured after he has succeeded in rejoining his army, must be treated as a prisoner of war.

i) Scouts, or soldiers in uniform, who penetrate the zone of operations of the hostile army to obtain information, are not spies.

c) Mercenaries. Protocol I to the 1949 Geneva Convention provides that mercenaries shall not have the rights of combatants or of prisoners of war. To be considered a mercenary: [i] the person must be specially recruited to fight for a particular armed conflict, i.e., as a combatant, not as an adviser; [ii] must take direct part in the hostilities; [iii] motivated essentially by the desire for personal gain and, in fact, is provided material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party.

5. *Conduct of hostilities.* Three basic principles:

a) Principle of Military Necessity. The belligerent may employ any amount of force to compel the complete submission of the enemy with the least possible loss of lives, time and money. This justified the atom bombing of Hiroshima and Nagasaki.

b) Principle of Humanity. Prohibits the use of any measure that is not absolutely necessary for the purposes of the war, such as the poisoning of wells, use of dum-dum bullets, etc.

i) *The Humanitarian Convention in Armed Conflicts*, adopted in 1977, affirmed the principles that the right of the parties adopt means of

injuring the enemy is not unlimited; parties are prohibited to launch attacks against the civilian population as such; and a distinction must be made at all times between persons taking part in the hostilities and members of the civilian population, to spare the latter as much as possible. [Note that even if cases of enforcement action undertaken by the United Nations is not war in the traditional sense as it is employed only to maintain international peace and security, the humanitarian rules of warfare should still govern.]

c) Principle of Chivalry. Prohibits the belligerents from the employment of perfidious or treacherous methods, such as the illegal use of Red Cross emblems, etc.

B. *Belligerent Occupation.* It is the temporary military occupation of the enemy's territory during the war. The occupant need not have its feet planted on every square foot of territory, provided it maintains effective control and military superiority therein, being able to send, in case of attack, sufficient forces to assert its authority within a reasonable time [*Tan Se Chiong v. Director of Prisons*, L-5920, June 25, 1955],

1. *Effects:* No change in sovereignty, but the exercise of the powers of sovereignty is suspended. Political laws, except the law on treason, are suspended; municipal laws remain in force [*Laurel v. Misa*, 77 Phil 856].

2. *Rights and duties of belligerent occupant:*

a) Re-establish or continue the processes of orderly administration, including enactment of laws.

b) Adopt measures for the protection of the inhabitants.

c) Requisition (sequester) goods [with proper cash or future payment] and services in non-military projects. [Note that *conscription* is prohibited],

d) Demand taxes and contributions to finance military and local administrative needs. *Foraging:* The actual taking of provisions for men and animals by the occupation troops where lack of time makes it inconvenient to obtain supplies by usual or ordinary methods. However, compensation must be paid at the end of the war.

e) Issue legal currency.

f) Use enemy property, whether public or private, but private property is subject to indemnification or return at the end of the war [*Republic v. Lara*, 96 Phil 170].

3. *The Right of Angary.* The right of a belligerent state, in cases of extreme necessity, to destroy or use neutral property on its own or on enemy territory, or on the high seas.

C. Non-Hostile Intercourse.

1. *Flag of Truce.* White in color, indicates the desire to communicate with the enemy; the agent, called *parlementaire*, enjoys inviolability, and is entrusted with the duty of negotiating with the enemy. .
2. *Cartels.* Agreements to regulate intercourse during the war, usually on the exchange of prisoners of war.
3. *Passport.* Written permission given by the belligerent government to the subjects of the enemy to travel generally in belligerent territory.
4. *Safe-conduct.* Permission given to an enemy subject or to an enemy vessel allowing passage between defined points.
5. *Safeguard.* Protection granted by a commanding officer either to enemy persons or property within his command, usually with an escort or convoy of soldiers providing the needed protection.
6. *License to trade.* Permission given by competent authority to individuals to carry on trade though there is a state of war.

D. Suspension of Hostilities.

1. *Suspension of arms.* Temporary cessation of hostilities by agreement of the local commanders for such purposes as gathering of the wounded and burial of the dead.
2. *Armistice.* Suspension of hostilities within a certain area or in the entire region of the war, agreed upon by the belligerents, usually for the purpose of arranging the terms of the peace.
3. *Cease-fire.* Unconditional stoppage of all hostilities, usually ordered by an international body.
4. *Truce.* Conditional cease-fire for political purposes.
5. *Capitulation.* Surrender of military forces, places or districts, in accordance with rules of military honor.

E. Termination of War.

1. *Simple cessation of hostilities.* Usually, the principle of *uti possidetis*, with respect to property and territory possessed by the belligerents, is applied.

2. Conclusion of a negotiated treaty of peace.,.

3. Defeat of one of the belligerents followed by a dictated treaty of peace, or annexation of conquered territory.

F. Postliminium. The revival or reversion to the old laws and sovereignty of territory which has been under belligerent occupation once control of the belligerent occupant is lost over the territory affected. See: *Kim Chan v. Valdez Tan Keh*, 75 Phil 113.

1. Distinguished from *Uti Possidetis*. The latter allows retention of property or territory in the belligerent's actual possession at the time of the cessation of hostilities.

2. Judicial acts and proceedings during the Japanese occupation which were not of political complexion remain valid even after the liberation of the Philippines [*Ognir v. Director of Prisons*, 80 Phil 401],

G. War Crimes. They are acts for which soldiers or other individuals may be punished by the enemy on capture of the offender.

1. War criminal. Any person, whether a civilian or a member of the armed forces of the state, who commits an act that violates a rule of international law governing armed conflicts.

2. The Philippines had the authority to try war criminals after World War II [*Kuroda v. Jalandoni*, 42 O.G. 4282; *Yamashita v. Styer*, 75 Phil 563].

H. Neutrality and Neutralization.

1. Distinctions: Neutrality is non-participation, directly or indirectly, in a war between contending belligerents. Neutralization is the result of a treaty wherein the conditions of the status are agreed upon by the neutralized state and the other signatories. The first exists only during war and is governed by the law of nations; the other exists both in times of peace and war, and governed by the agreement entered into by and between the parties.

a) Thus, the term "neutrality" should not be confused with the concept of "neutralized states", like Switzerland. A permanently neutral or neutralized state is one whose independence or integrity is guaranteed by other states, usually the Great Powers, under the condition that such state binds itself never to participate in an armed conflict or military operation except for individual self-defense. The permanent neutrality of Switzerland was guaranteed under the "Eight Power Declaration of March 20, 1815".

b) In the Cold War, the states which sided with neither the democracies nor the communists were referred to as “neutralist” or “non-aligned” states.

c) The term “non-belliaerency” has sometimes been used to describe the status of a state which did not take part in military operations but which did not observe the duties of a neutral. This is a status mid-way between a neutral and a belligerent, and is not recognized in international law.

2. *Neutrality under the UN Charter.* In view of the enforcement action which the UN may take, absolute neutrality cannot exist among UN members.

3. *Rules of Neutrality.* Neutrals have the right and duty:

a) To abstain from taking part in the hostilities and from giving assistance to either belligerent by: [i] the sending of troops; [ii] the official grant of loans; or [iii] the carriage of contraband.

i) *Contraband* refers to goods which, although neutral property, may be seized by a belligerent because they are useful for war and are bound for a hostile destination. They may be absolute, such as guns or ammunition, which are useful for war under all circumstances; conditional, such as food and clothing, which have both civilian and military utility; or under the free list, such as medicines, which are exempt from the law on contraband for humanitarian reasons.

ii) *Doctrine of ultimate consumption.* Goods intended for civilian use which may ultimately find their way to and be consumed by belligerent forces may be seized on the way.

iii) *Doctrine of infection.* Innocent goods shipped with contraband may also be seized.

iv) *Doctrine of continuous voyage/continuous transport.* Goods reloaded at an intermediate port on the same vessel, or reloaded on another vessel or other forms of transportation may also be seized on the basis of the doctrine of ultimate consumption.

v) Engaging in *unneutral service*: acts of a more hostile character than carriage of contraband or breach of a blockade, undertaken by merchant vessels of a neutral state in aid of any of the belligerents, e.g., transport of individual passengers who are members of the armed forces of the enemy.

b) To prevent its territory and other resources from being used in the conduct of hostilities, e.g., allowing territory to be used as the base of operations [24-hour rule for vessels of belligerents to leave neutral port], or setting up of wireless stations in the territory],

c) To acquiesce to certain restrictions and limitations which the belligerents may find necessary to impose, such as:

i) *Blockade*: a hostile operation by means of which vessels and aircraft of one belligerent prevent all other vessels, including those of neutral states, from leaving or entering the port or coasts of the other belligerent, the purpose being to shut off the place from international commerce and communications with other states. A *pacific blockade* applies only to vessels of blockaded states, not to those of other states.

ia) To be valid, the blockade must be binding, i.e., duly communicated to neutral states; effective, i.e., maintained by adequate forces so as to make ingress to and egress from the port dangerous; established by competent authority of the belligerent government; limited only to the territory of the enemy; and impartially applied to all states. [Note that the liability of a neutral vessel to capture for breach of the blockade is contingent on actual or presumptive knowledge of the blockade.

ii) *Visit and Search* and, in some cases, to the *authority of prize courts*. Belligerent warships and aircraft have the right to visit and search neutral merchant vessels to determine whether they are in any way connected with the hostilities.

iia) Vessels captured for engaging in hostile activities are considered as *prize*. However, they may not be confiscated summarily, but brought before a *prize court* [a tribunal established by a belligerent under its own laws, in its territory or in the territory of its allies, applying international law in the absence of special municipal legislation].

4. *Termination of neutrality*. Neutrality terminates upon the conclusion of a treaty of peace between the belligerents, or when the neutral state itself joins the war.

The book started out as a compilation of the author's random notes when he first conducted pre-bar review lectures in 1984. It was originally intended - and still is meant - to be a brief handbook on constitutional law principles and jurisprudence, for use by those preparing for the bar examination. In time, with the inclusion of related laws and jurisprudence, the book has served as an alternative textbook in undergraduate classes. It remains the author's hope, however, that the bar candidate will find in the book a helpful tool in his quest to become a member of the Philippine Bar.