Bill of Rights – It is a set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of the government as a means of securing the enjoyment of those rights. ***(PBM Employees Org vs PBM, 51 SCRA 189)***

Kinds
Classification of Rights:

1. Political rights – granted by law to members of community in relation to their direct or indirect participation in the establishment or administration of the government;

2. Civil rights – rights which municipal law will enforce at the instance of private individuals for the purpose of securing them the enjoyment of their means of happiness. p 91 Nachura

The Bill of Rights governs the relationship between the individual and the State. Its concern is not the relation of individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder ***(People vs Marti GR 81561)***

It is generally self- executing. ***(p. 91 Nachura)***

DUE PROCESS

Due Process simply states that it is part of the sporting idea of fair play to hear the other side before an opinion is formed or a decision is made by those who sit in judgment***. (Ynot vs. IAC, 148 SCRA 659)***

A law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial (***Dartmouth College v. Woodward, 4 Wheaton 518).***

a) Relativity of DP - In the book of *Bernas at page 32*, it was asked:

"Is the requirement of substantive DP a rigid concept?"

Bernas answered that: *the heart of substantive DP is the requirement of reasonableness or absence of exercise of arbitrary power. These are NECESSARILY RELATIVE CONCEPTS which depend on the circumstances of every case.*

The phrase due process itself is a term that defies exact definition or meaning, the same being left to be developed and applied as cases and situations come along. Appltying the Due Process Clause necessarily involves valud judgments,as there constantly comes into play the imperative to make adjustments and accommodations to the various needs and demands of society. Once it is determined that DP applies, the question remains what process is due. DP is flexible, and calls for such procedural protections as the particular situation demands. Consideration of what procedures DP may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved, as well as of the private interest that has been affected by a governmental action. In the case of ***Sec of Justice vs Lantion 343 SCRA 377***, Justice Puno said that procedural DP required by a given set of circumstances must begin with the determination of the precise nature of the government function involved as well as the private interests that has been affected by the governmental action. The concept of DP is flexible for not all situations calling for procedural safeguards call for the same kind of procedure. ***(Gorospe p. 80 – 82)***

b) Procedural and Substantive DP

Substantive due process – Asks whether the government has an adequate reason for taking away a person's life, liberty or property. In other words, substantive DP looks to whether there is a sufficient justification for the government's action. Whether there is such a justification depends very much on the level of the scrutiny used.

-If a law is in an area where only the rational basis test is applied – substantive DP is met so long as the law is rationally related to a legitimate governmental purpose.

-If such is an area where strict scrutiny is used, then the government will meet substantive DP only if it can prove that the law is necessary to achieve compelling government purpose. ***(City of Manila vs Laguio GR 118127; p. 75 Duka)***

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

1. the interests of the public in general, as distinguished from those of a particular class, require the intervention of the State; **(Lawful Subject)**

2. the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals. **(Lawful Means)** ***(p. 93 Nachura***).

Publication of laws is part of substantive DP. Without such notice and publication, there would be no basis for the application of the maxim *ignorantia legis non excusat*. It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of w/c he had no notice whatsoever, not even a constructive one. It is needless to say that the publication of presidential issuances "of a public nature" or "of general applicability" is a requirement of due process. It is a rule of law that before a person may be bound by law, he must first be officially and specifically informed of its contents. ***(Tañada vs Tuvera 136 SCRA 27)***

☑**Take Note**: **Presumption when the State acts** to interfere with life, liberty, or property **– Valid**

Procedural DP – refers to the procedures that the government must follow before it deprives a person of life, liberty, or property.

Essence of procedural DP – embodied in the basic requirement of notice and real opportunity to be heard. ***(Casimiro vs Tandog GR 146137)***

Procedural due process – this serves as a restriction on actions of judicial and quasi-judicial agencies of the government.

Requisites of Civil DP:

1. an impartial court or tribunal clothed with judicial power to hear and determine the matters before it;

2. jurisdiction properly acquired over the person of the defendant and over property which is the subject matter of the proceeding;

3. opportunity to be heard;

4. judgment rendered upon lawful hearing and based on evidence adduced ***(Banco Español Filipino v. Palanca, G.R. No. L-11390, March 26, 1918).***

Requisites of Criminal DP

1. Accused is heard by a court of competent jurisdiction;

2. Accused is proceeded against under the orderly process of law;

3. Accused is given notice and opportunity to be heard;

4. Judgment rendered is within the authority of the constitutional law ***(People vs Vera)***

Requisites of Administrative DP

1. Right to hearing – includes right to present one's case and submit evidence to support thereof;

2. Tribunal or body or any of its judges must act on its own independent consideration of the law and facts of the controversy;

3. Tribunal must consider the evidence presented;

4. Evidence must be substantial, which means relevant evidence as a reasonable might accept as adequate to support a conclusion;

5. Decision must have something to support itself;

6. Decision must be based on evidence presented during hearing or at least contained in the record and disclosed by the parties;

7. Decision must be rendered in a manner that the parties can know the various issues involved and the reason for the decision rendered ***(Ang Tibay vs CIR)***

Requisites for DP for students before imposition of disciplinary actions

1. must be informed in writing of the nature and cause of the accusation against him;

2. right to answer charges against him, with the assistance of counsel, if desired.;

3. Informed of the evidence against him;

4. Right to adduce evidence in his behalf;

5. Evidence must be duly considered by the investigating committee or official designated by the school to hear and decide the case. ***(ADMU vs Capulong 222 SCRA 644)***

☑**Take Note**: **Appeal is not a natural right nor a part of DP.** But where the Constitution gives a person the right to appeal, e.g. cases under the minimum appellate jurisdiction of the SC, denial of right to appeal constitutes violation of DP. Also, if there is a statutory grant provided that the same is made in accordance with the provisions of the law. ***(Sapad vs CA GR 132153)***

☑**Take Note**: Preliminary investigation is not a constitutional right but merely statutory. But where there is a statutory grant for PI, denial of the same is an infringement of DP.

Constitutional and Statutory DP – See ☞***Serrano vs NLRC and Agabon vs NLRC 323 SCRA 445 (442 SCRA 573)***

Constitutional DP – protects the individual from the government and assures him of his rights in criminal, civil, or administrative proceedings.

Statutory DP – found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.

In these cases, the 30-day notice requirement in case of termination for an authorized cause is held to be not a part of DP. First, the DP clause in the Constitution is a limitation on governmental powers. It does not apply to the exercise of a private power, such as the termination of employment. Second, the purpose for requiring such notice is only to give the employee time to prepare for the eventual loss of his job. Third, the employer cannot really be expected to be entirely an impartial judge. It was also held in these cases that not all notice requirements are requirements of DP. It was held that not all notice requirements are requirements of DP. Some are simply part of procedure to be followed before a right granted to a party can be

exercised. Others are simply an application of the Justinian precept, embodied in the Civil Code, to act with justice, give everyone xxx. Such is the notice requirement in Arts 282-283. The consequence of the failure either of the employer or the employee to live up to this precept is to make him liable in damages, not to render his act void.

Hierarchy of Rights

In ***SJS vs Atienza, 545 SCRA 92***, it was held that the right to life enjoys precedence over the right to property.

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. ***(Chavez vs Gonzales 545 SCRA 441)***

In ***Philippine Blooming Mills Employees Organization vs PBM Co GR L-31195***, Justice Makasiar stressed that:

In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization.

The happiness of the individual, not the well-being of the State, was the criterion by which its behaviour was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise.

The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment.

While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Property and property rights can be lost thru prescription; but human rights are imprescriptible.

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious

intrusions". The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose – that the law is neither arbitrary nor discriminatory nor oppressive – would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent. ***(p. 17-19 Duka).***

In the case of ***People vs Tudtud 412 SCRA 142***, it was held –

The right against unreasonable search and seizure in turn is at the top of the hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property, which is protected by the due process clause.

Whenever rights founded on life or liberty clash with rights founded on property considerations, the proper allocation of weights would have to be undertaken. ***(Blo Umpar Adiong vs COMELEC 207 SCRA 712)***

Judicial Standards of Review

These are the following:

Mere rationality deferential review standard – Laws are upheld if they rationally further a legitimate governmental interest, without courts seriously inquiring into the substantiality of such interest and examining the alternative means by which the objectives could be achieved ***(Estrada vs Sandiganbayan 369 SCRA 394).***

It has been described as adopting a deferential attitude towards legislative classifications. The Rational Basis Test remains the primary standard for evaluating the constitutionality of a statute. ***(Central Bank Employees Assn vs BSP 446 SCRA 299).***

Middle-level review or intermediate review or heightened scrutiny standard – Under the intermediate review, the substantiality of the governmental interest is seriously looked into and the availability of less restrictive alternatives are considered. Such classifications must be substantially related to a sufficiently important governmental interest. The US SC has generally applied Intermediate Review when the challenged statute's classification is based on either gender, illegitimacy and under certain

circumstance, legal residency with regard to availment of free public education, civil service employment preference for armed forces veterans who are state residents upon entry to military service, and the right to practice for compensation the profession for which certain persons have been qualified and licensed. ***(Estrada vs Sandiganbayan)***

Strict Scrutiny Standard

Under strict scrutiny, the focus is on the presence of compelling, rather than substantial governmental interest and on the absence of less restrictive means for achieving that interest.

Strict scrutiny is applied when the challenged statute either (1) classifies on the basis of inherently suspect characteristic or (2) infringes fundamental constitutional rights. With respect to such classifications, the usual presumption of constitutionality is reversed, and it is incumbent upon the government to demonstrate that its classification has been narrowly tailored to further compelling governmental interests, otherwise the law shall be declared unconstitutional for being violative of the Equal Protection Clause.

In ***San Antonio Independent School Dist vs Rodriguez 411 US 1,*** the US SC articulated that suspect classifications were not limited to classifications based on race, alienage, or national origin but could also be applied to other criteria such as religion.

Void-for-vagueness doctrine

Void-for-vagueness rule – accused is 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 and, hence shall be avoided.

It is repugnant to the Constitution in two respects:it violates DP for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid.

It leaves law enforcers unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle. ***(People v. Nazario, G.R. No. 44143)***

An act will be declared void and inoperative on the ground of vagueness and uncertainty only upon a showing that the defect is such that the courts are unable to determine, with any reasonable degree of certainty, what the legislature intended. ***(p. 76 Duka).***

Vagueness doctrine merely requires a reasonable degree of certainty for the statute to be upheld – not absolute precision or mathematical exactitude. Flexibility, rather than meticulous specificity is permissible as long as the metes and bounds of the statute are clearly delineated. ***(Estrada vs Sandiganbayan 369 SCRA 394)***

4. EQUAL PROTECTION

a) Concept - The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which it is limited either in the object to which it is directed or by territory within which is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exists for making a distinction between those who fall within such class and those who do not. ***(Ichong vs Hernandez)***

But substantive equality is not enough. It is also required that the law be enforced and applied equally. As held by the US Supreme Court, even if the law be fair and impartial on its face, it will still violate equal protection if it is administered “with an evil eye and an uneven hand”, so as to unjustly benefit some and prejudice others. ***(p. 124 Cruz)***

The clause also commands the State to pass laws which positively promote equality or reduce existing inequalities. ***(p. 37 Bernas)***

b) Requisites of Valid Classification:

1. Such classification rests upon substantial distinctions;
2. It is not confined to existing conditions only;
3. It applies equally to all members of the same class;
4. It is germane to the purposes of the law. ***(People v. Cayat),***
   - reasonable relation to the purpose of the law.

5. SEARCHES ANS SEIZURES

a) Concept - The right against unreasonable searches and seizures is the immunity of one's person, which includes his residence, his papers, and other possessions. The guarantee refers to "the right of personal security" of the individual. What is sought to be protected against the State's unlawful intrusion are persons, not places. To conclude otherwise would lead to the absurd logic that for a person to be immune against unreasonable searches and seizures, he must be in his home or office, within a fenced yard or a private place. The Bill of Rights belongs as much to the person in the street as to the individual in the sanctuary of his bedroom. ***(People v. Valdez, 25 September 2000)***

- Available to all persons, including aliens whether accused of crime or not.

- Artificial persons are entitled to the guaranty but they may be required to open their books of accounts for examination by the State in the exercise of the police power or the power of taxation. Their premises may be not be searched nor may their papers and effects be seized except by virtue of a valid warrant. ***(Qua Chee Gan vs Deportation Board)***

- The right is personal; it may be invoked only by the person entitled to it Such right may be waived either expressly or impliedly. ***(Stonehill v. Diokno)***

Who can invoke – All persons, including aliens, whether accused of a crime or not. Artificial persons are also entitled to the guarantee, though may be required to open their books of accounts for examination by the State in the exercise of PP and taxing powers. ***(Moncada vs People's Court 80 Phil 1.)***

The right is personal. Hence, waiver, express or implied, must be made by the person entitled to it. ***(Stonehill vs Diokno 20 SCRA 383).***

To whom does the right apply

The right applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. ***(People vs Marti GR 81561).*** The Bill of Rights does not protect citizens from unreasonable searches and seizure by private individuals. ***(Waterous Drug Corp vs NLRC.)*** However, it may be possible to find a remedy in the Civil Code. ***(p. 38 Bernas)***

What the constitutional prohibition prohibits are unreasonable searches and seizures. Searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest. A reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of the case. There is no presumption of regularity in search cases. ***(p. 38 Bernas.)***

Purpose of Sec 2 Article III

To protect the privacy and sanctity of the person and of his house and other possessions against arbitrary intrusions by State officers. p. 37 Bernas.

What could be referred to by the phrase searches and seizures of whatever nature and for whatever purpose?

It extends to 2 penumbral areas.

First, subpoena duces tecum.

Second, building inspection by administrative officers. ***(Bernas p. 45)***

☑**Take Note**: **Illegality of the arrest – is not jurisdictional;** objection thereto is waived where the person submits to arraignment without any objection. ***(People vs Del Rosario GR 127755)***

Where to file

A. Search Warrant:

1) Where a case is pending – Court wherein the same is filed or the assigned branch thereof has primary jurisdiction to issue the search warrant.

2) No criminal case pending yet – The executive judges, or their lawful substitutes, in the areas and for the offense contemplated in Circular 1-91, shall have primary jurisdiction. ***(Malalaon vs CA 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 therefore, where the obtention of such warrant is necessitated and justified by compelling considerations of urgency, subject, time, and place. ***(Ilano vs CA 244 SCRA 346)***

Determination thereof rests with the court where application is filed subject to review with the appellate court in case of grave abuse of discretion. ***(People vs Chui GR 142915-16)***

Where a search warrant is issued by one court and the criminal action based on the results of the search is commenced in another court, motion to quash the warrant or to retrieve things thereunder seized may be filed in either issuing court or that in which the criminal action was filed. ***(People vs CA GR 126379)***

Such remedy however 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 vs People GR 135503)***

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 was no offense committed. The effect oof such quashal is that the items seized shall be inadmissible in evidence. ***(People vs Francisco GR 129035)***

B. Warrant of Arrest:

Court where the information is filed. ***(People vs Chui GR 142915-16)***

Permutations of the right to the security of persons:

a. The right to security of person is freedom from fear.

b. The right to a security of a person is a guarantee of bodily and psychological integrity or security.
c. The right to security of a person is a guarantee of protection of one's rights by the government. ***(p. 86-88 Duka)***

Exclusionary Rule

>**Consequence of a search or seizure without a warrant** – Any evidence obtained in such shall be inadmissible in ANY proceeding**. [Art II Sec 3(2).]**

>**Effect of application for bail wrt to validity of a warrant** – **(Section 26, Rule 114 ROC)**

b) Warrant Requirement

As mentioned earlier, warrant is necessary for the arrest or the seizure to be "reasonable". Read Sec 6 Rule 112 of the ROC

Requisites of a valid warrant

1. it must be issued upon probable cause
2. probable cause must be determined personally by a judge
3. such judge must examine under oath or affirmation the complainant and the witnesses he may produce
4. the warrant must particularly describe the place to be searched and the person or things to be seized. ***(p. 39 Bernas)***

Probable Cause

Probable cause for the issuance of a warrant of arrest – Such facts and circumstances which would lead a reasonable discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. ***(Henry vs US, 1959 case, p. 40 Bernas)***

Probable cause for search– Such facts and circumstances which would lead a reasonable 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 to be searched. ***(Henry vs US, 1959 case, p. 40 Bernas)***

Warrant must refer to one specific offense

However, in the case of ***People vs Dichoso 223 SCRA 174***, it was held that one search warrant may be validly issued for several violations of the Dangerous Drugs Act.

Evidence needed to establish PC – those of a reasonably prudent man, not the exacting calibrations of a full blown trial. PC is concerned with probability, not absolute or even moral certainty. ***(Microsoft vs Maxicorp GR 140946)***

Should proof of PC refer to a specific offender?

a. **Search warrant** – **No**
b. **Warrant of arrest** – **Yes** ***(Webb vs de Leon GR 121234)***

Personal Determination

Meaning of "personally" in the search and seizure clause

As to warrant of arrest - personal determination and not personal examination of a judge. ***(Soliven vs Makasiar).***

The judge shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of PC and, on the basis thereof, issue a warrant of arrest; or if, on the basis thereof, he finds no PC, 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 PC. ***(Cruz vs Judge Areola AM No. RTJ-01-1642.)***

The judge must look at the report, the affidavits, the transcripts of steno notes (if any), and all other supporting documents behind the Prosecutor's certification. ***(Lim vs Felix GR 94054-57)***.

The same rule applies to election offenses even if, in such cases, the PI is done by the COMELEC. ***(People vs Delgado. 189 SCRA 715.)***

Hearing is not necessary. In ***Webb vs 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.

The judge is not tasked to review in detail the evidence submitted during PI. It is sufficient that the judge should personally evaluate the report and supporting documents submitted by the prosecution in determining probable cause. (***Cruz vs People 233 SCRA 439)***

As to search warrant - the examining magistrate must make probing and exhaustive, not merely routine or pro forma examination of the applicant and the witnesses. ***(p. 92 Duka)***

Determination of PC for filing an information

Such lies with the prosecution which is an executive function. Its correctness is a matter that the trial court itself does not and may not be compelled to pass upon. ***(People vs CA GR 126005)***

Examination under oath or affirmation

General Rule: 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 vs Mamaril GR 147607)***

Exception: Such omission is not fatal if there is evidence on record showing that such personal examination was conducted and what testimony was presented. ***(People vs Tee GR 140546-47)***

Particularity

The rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched. ***(People v. Salanguit, G.R. Nos. 133254-55.)***

In determining the sufficiency of the description of the address, the executing officer's prior knowledge of the place intended in the warrant is relevant eg. the executing officer was also the affiant on whose affidavit the warrant had issued. ***(Burgos Sr. vs Chief of Staff. 133 SCRA 800.)***

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 and by which the warrant officer may be guided in making the search and seizure.

However, it is not required that a technical description be given. ***(People v. Rubio)***

Purpose of particularity – To prevent abuse by the officer enforcing the warrant by leaving to him no discretion as to who or what to search or seize.

☑**Take Note**: **Gen Rule :** John Doe warrants are void.
Exception: If such warrants contain a description personae to enable the officer to identify the accused.

General Rule: Only the judge has the power to issue a warrant after the proper procedure has been duly taken.
Exceptions:
1. The Commissioner of Immigration and Deportation may issue warrants only for the purpose of carrying out a final decision of deportation ***(CID v. Judge De la Rosa, G.R. No. 95122-23, May 31, 1991)*** or if there is sufficient proof of guilt of an alien ***(Harvey v. Defensor- Santiago, G.R. No. 82544, June 28, 1988; Qua Chee Gan v. Deportation Board.)***

In such case, probable cause is not necessary.

Warrant of arrest may be issued by administrative authorities only for the purpose of carrying out a final finding of a violation of law and not for the sole purpose of investigation or prosecution. – It may be issued only after the proceeding has taken place as when there is already a final decision of the administrative authorities***.(Morano vs Vivo 20 SCRA 562)***

c. Warrantless Searches

In these cases (except Terry search), probable cause is necessary. PC, in these cases, must only be based on reasonable grounds of suspicion or belief that a crime has been committed or is about to be committed as determined by the searching officer. ***(People vs Aruta GR 120915)***

a. Search incident to a lawful arrest. A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant**. (Sec. 13, Rule 126, ROC)**

A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense. The search may extend beyond the person of the one arrested to include the permissible area or surroundings within his immediate control.

The lawful arrest being the sole justification for the validity of the warrantless search under the exception, the same must be limited to and circumscribed by the subject, time and place of the arrest.

As to subject, the warrantless search is sanctioned only with respect to the person of the suspect, and things that may be seized from him are limited to “dangerous weapons” or “anything which may be used as proof off the commission of the offense.”

With respect to time and place of the warrantless search, it must be contemporaneous with the lawful arrest. Stated otherwise, to be valid the search must be conducted at about the time of the arrest or immediately thereafter and only at the place where the suspect was arrested, or the premises or surroundings under his immediate control. ***(People v. Ting, etc., G.R. Nos. 130568-69)***

Tests for a valid warrantless search incidental to lawful arrest:

1. item to searched was within the arrestee’s custody or area of immediate control.
2. the search was contemporaneous with the arrest. ***(Bernas p. 47)***

b. When it involves prohibited articles in "plain view."

Requisites:

1. prior valid intrusion into a place;
2. the evidence inadvertently discovered by the police who had the right to be where they are;
3. the legality of the evidence must be immediately apparent;
4. is noticed without further search

c. **Search of a moving vehicle.**

Highly regulated by the government, the vehicle's inherent mobility reduces expectations of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity.

Probable cause for warrantless search of vehicles (EXTENSIVE SEARCH).

Although the term eludes exact definition, probable cause

1) signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or

2) the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.

The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case. ***(Caballes v. Court of Appeals, et al., G.R. No. 136292, January 15, 2002)***

ROUTINE INSPECTIONS are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible is limited to the following instances:

a) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds;

b) simply looks into a vehicle;

c) flashes a light therein without opening the car's doors;

d) where the occupants are not subjected to a physical or body search;

e) where the inspection of the vehicles is limited to a visual search or visual inspection; and

f) where the routine check is conducted at a fixed area. ***(Caballes v. Court of Appeals, et al., G.R. No. 136292***

d. Consented warrantless search.

In case of consented searches or waiver of the constitutional guarantee, against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that:

a. The right exists;

b. The person involved had knowledge, either actual or constructive, of the existence of such right; and

c. The said person had an actual intention to relinquish the right. ***(People v. Figueroa, et al., G.R. No. 124056)***

Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given:

1) The age of the defendant;

2) Whether he was in a public or secluded location;

3) Whether he objected to the search or passively looked on;

4) The education and intelligence of the defendant;

5) The presence of coercive police procedures;

6) The defendant's belief that no incriminating evidence will be found; the nature of the police questioning;
the environment in which the questioning took place; and

7) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given. ***(Caballes v. Court of Appeals, et al., G.R. No. 136292)***

A peaceful submission to a search or seizure is not consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. ***(People v. Cubcubin)***

Permission granted for officers to enter a house to look for rebel soldiers does not include permission for a room to room search. ***(Spouses Veroy vs Layague GR 95632)***

e. Customs searches. – Seizure of goods concealed to avoid duties. ***(Pacis vs Pamaran 56 SCRA 16)***

People v. Escano, et al., G.R. Nos. 129756-58

REASONS why there is no necessity for the Bureau of Customs to secure a judicial search warrant where the place to be searched is not a dwelling place:

1) There should be no unnecessary hindrance on the government's drive to prevent smuggling and other frauds upon the Customs;

2) To render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform ***(Jao, et al., v. Court of Appeals, et al., and companion case, 249 SCRA 35, 43);*** and

3) The doctrine of primary jurisdiction.

Searches without warrant of automobiles is also allowed for the purpose of preventing violations of smuggling or immigration laws, provided such searches are made at borders or 'constructive borders' like checkpoints near the boundary lines of the State. ***(Caballes v. Court of Appeals, et al., G.R. No. 136292, January 15, 2002)***

f. Terry search:

"Stop and frisk" is a "limited protective search of outer clothing for weapons." While probable cause is not required to conduct a "stop and frisk," mere suspicion or a hunch will not invalidate it. A GENUINE REASON must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. ***(Malacat v. Court of Appeals, G.R. No. 123595)***

It serves a two-fold interest:

1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause.

2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that would unexpectedly and fatally be used against the police officer. ***(Malacat vs CA)***

g. Administrative Searches

– Inspection of buildings and other premises to enforcement of fire, sanitary, and building regulations. ***Camara vs Municipal Court 387 US 523*** held that to sustain such searches without a search warrant; there must be probable cause and urgency to justify the inspection.

h. Warrantless search arising from exigent circumstance

This was applied in ***People vs De Gracia GR 102009-10*** where there were intelligence reports that the buikding was being used as headquarters by the RAM during the 1989 coup d etat. Surveillance indicated rebel activities in the building. Nearby courts were closed and general chaos and disorder prevailed. Under these situations, the raiding team had no opportunity to apply foor and secure a search warrant from the courts. Under such urgency and exigency of the moment, a search warrant should be lawfully be dispensed with.

>Property to be searched need not be owned by the person against whom the search warrant is directed. Sufficient that the property is under control or possession of the person sought to be searched.

d. Warrantless Arrests

A peace officer or a private person may, without warrant, arrest a person:

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

Requisites for valid *in flagrante* warrantless arrest

1. The person to be arrested must execute an overt act indicating that he
    a. has just committed,
    b. is actually committing, or
    c. is attempting to commit a crime; and;
2. Such overt act is done in the presence or within the view of the arresting officer. ***(People v. Molina, G.R. No. 133917)***

Entrapment; when allowed

Where the criminal intent originates in the mind of the entrapping person and the accused is lured into the commission of the offense charged in order too prosecute him, there is entrapment and no conviction may be had.

Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person acting as a decoy for the state, or public officials furnished the accused an opportunity for commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no entrapment and the accused must be convicted. ***(People vs Doria GR 125299)***

(b) When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (Rule 113 Sec 5 ROC)

Personal knowledge of facts" in warrantless arrest must be based upon probable cause, which means an actual belief or reasonable ground of suspicion.

Person charged with rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof may be arrested without a warrant these being continuing offenses and therefore the accused are assumed to be always continuing the offense. ***(Umil vs Ramos GR 81567)***

(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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (Sec. 5, Rule 113, ROC)

Remedies for unlawful arrest:

a. Motion for the quashal of the warrant;
b. Motion for reinvestigation.

Instances considered as waiver of illegal arrest:

1) Failure to challenge the validity of the arrest and search, as well as the admission of the evidence obtained thereby, is considered a waiver of the constitutional rights, particularly against unreasonable searches and seizures. ***(People v. Cuison, et al., G.R. No. 109287)***

2) Any irregularity attendant to the arrest was cured by voluntary submission to the jurisdiction of the trial court upon entering a plea and participation during the trial. ***(People v. Tumaneng, G.R. No. 117624)***

3) The filing of charges and the subsequent issuance of a 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 because of such defect***. (The minor Larranaga, et al., v. Court of Appeals, et al., G.R. No. 130644)***

4) Failure to question the legality of the arrest before arraignment is deemed a waiver of such defense. ***(People v. Deang, et al., G.R. No. 128045)***

e) Administrative arrests

Warrant of arrest may be issued by administrative authorities only for the purpose of carrying out a final finding of a violation of law, like an order of deportation or an order of contempt, and not for the sole purpose of investigation or prosecution. – It may be issued only after the proceeding has taken place as when there is already a final decision of the administrative authorities. The requirement of probable cause, to be determined by the Judge, does not extend to deportation proceedings. ***(Morano vs Vivo 20 SCRA 562)***

In the case of ***Harvey vs Santiago 162 SCRA 840,*** it was held that the arrest is a step preliminary to the deportation of the aliens who had violated the conditions of their stay in this country. To rule otherwise would be to render the authority given the Commissioner nugatory to the detriment of the State.

f) Drug, Alcohol, and Blood Tests

Doctrine in SJS vs DDB

Drug Testing of those charged with a crime

We find the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless." In the case of persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy.[40] To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case would violate a persons' right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.

Random Drug Test for students and public and private employees

As the warrantless clause of Sec. 2, Art III of the Constitution is couched and as has been held, "reasonableness" is the touchstone of the validity of a government search or intrusion. And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government - mandated intrusion on the individual's privacy interest against the promotion of some compelling state interest. In the criminal context, reasonableness requires showing of probable cause to be personally determined by a judge. Given that the drug - testing policy for employees--and students for that matter--under RA 9165 is in the nature of administrative search needing what was referred to in *Vernonia* as "swift and informal disciplinary procedures," the probable - cause standard is not required or even practicable. Be that as it may, the review should focus on the reasonableness of the challenged administrative search in question.

To reiterate, RA 9165 was enacted as a measure to stamp out illegal drug in the country and thus protect the well - being of the citizens, especially the youth, from the deleterious effects of dangerous drugs. The law intends to achieve this through the medium, among others, of promoting and resolutely pursuing a national drug abuse policy in the workplace via a mandatory random drug test. To the Court, the need for drug testing to at least minimize illegal drug use is substantial enough to override the individual's privacy interest under the premises. The Court can consider that the illegal drug menace cuts across gender, age group, and social - economic lines. And it may not be amiss to state that the sale, manufacture, or trafficking of illegal drugs, with their ready market, would be an investor's dream were it not for the illegal and immoral components of any of such activities. The drug problem has hardly abated since the martial law public execution of a notorious drug trafficker. The state can no longer assume a laid back stance with respect to this modern - day scourge. Drug enforcement agencies perceive a mandatory random drug test to be an effective way of preventing and deterring drug use among employees in private offices, the threat of detection by random testing being higher than other modes. The Court holds that the chosen method is a reasonable and enough means to lick the problem.

Taking into account the foregoing factors, i.e., the reduced expectation of privacy on the part of the employees, the compelling state concern likely to be met by the search, and the well - defined limits set forth in the law to properly guide authorities in the conduct of the random testing, we hold that the challenged drug test requirement is, under the limited context of the case, reasonable and, *ergo*, constitutional.

Blood Tests

US Cases

In the criminal context, reasonableness usually requires a showing of probable cause. The probable-cause standard, however, is peculiarly related to criminal investigations and may be unsuited to determining the reasonableness of administrative searches where the Government seeks to prevent the development of hazardous conditions. The American Court has

held that a warrant and finding of probable cause are unnecessary in the public school context because such requirements would unduly interfere with the maintenance of the swift and informal disciplinary procedures that are needed. ***(Board of Education vs Earls No. 01332 June 27 2002)***

However, it was held in ***Skinner vs Railway Labor Executives' Assn*** [489 US 602 (1989)], that requiring a person to submit urine or blood, or to undergo breathalyzer testing for the purpose of determining whether he is under the influence of alcohol or drugs are considered a species of search that is governed by the constitutional proscription against unreasonable searches and seizures. (Meaning PROBABLE CAUSE or an Individualized Suspicion is Required)

The exception to this is the doctrine under ***US vs Martinez-Fuerte*** (428 US 560) where it was held that, in limited circumstances, where the privacy interests implicated by the search are minimal and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion. (probably the reason why we have the US case of BOE vs Earls)

6. PRIVACY OF COMMUNICATIONS AND CORRESPONDENCE

What it covers: Letters, messages, telephone calls, telegrams and the like. ***(p. 56 Bernas)***

Intrusion allowed: Lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Grounds when a court may allow intrusion: Requirement of probable cause. (p 56 Bernas)

Requisites when intrusion is made without judicial order:

a) Must be based on the government official's assessment that public safety and order demand such intrusion.

b) The exercise of this power by an executive officer is subject to judicial review.

c) Such executive officer must be properly authorized except the President.

> Exclusionary Rule applies
> The right is personal.

See ☞RA 4200

a) Private and Public communications

Navarro vs CA 313 SCRA 153

Thus, the law prohibits the overhearing, intercepting, or recording private communications (RA 4200). Since the exchange between petitioner Navarro and Lingan was not private, its tape recording is not prohibited, hence, admissible in evidence.

In ***Chavez vs Gonzales***, the airing of the Garci Tapes does not violate the right to privacy because the content of the Garci Tapes is a matter of important public concern – the Constitution guarantees the people's right to information on matters of public concern (even if the communications between GMA and Garci are private in nature.)

In the case of ***Garcillano vs House of Rep*** (575 SCRA 170), it was held that a private communication is characterized as such based not on the content of the communication, but on the context that it was said in private and not for public consumption. The nature of the conversations is immaterial to a violation of the statute (RA 4200 or Anti-Wiretapping Law). The substance of the same need not be alleged in the information. What RA 4200 penalizes are the acts of secretly overhearing, intercepting, or recording private communications by means of devices enumerated therein. According to Senate deliberations re this statute, what is contemplated in the law is the communication between one person and another person – not between a speaker and a public. Says Senator Tanada (author of the law), "Because precisely, the speaker speaks so that the public may know what he has in mind, what he wants to communicate to the people, and there should be no objection to tape recording that speech.."RA 4200 however provides for exceptions when wiretapping is allowed by written order of the court under its Section 3. When legal – when done with consent of the parties or lawful court order. Notably, in the exceptions to the right in Art III Section 3, no law has been passed except RA 4200 depicting the phrase "when public safety or order requires otherwise as PRESCRIBED BY LAW".

b) Writ of Habeas Data

The writ of habeas data was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. The writ operates to protect a person's right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends.

An indispensable requirement before the privilege of the writ may be extended is the showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim.

Meralco vs Lim GR 184769

The habeas data rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.

It bears reiteration that like the writ of amparo, habeas data was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules

7. FREEDOM OF EXPRESSION

Concept and Scope

In ***Blo Umpar Adiong vs COMELEC***, it was held that freedom of expression is the matrix, the indispensable condition of nearly every other freedom. Under this guarantee, the people are to determine their own direction and chart their own destiny through the free exchange of ideas and not through dictation from or coercion of the government or anybody else's.

Historically, the guarantees of free expression were intended to provide some assurance that government would remain responsive to the will of the people, in line with the constitutional principle that sovereignty resides with the people and all government authority emanates from them. ***(Gonzales vs COMELEC 27 SCRA 835 Sep.Opinion)***

The doctrine of freedom of speech was formulated primarily for the protection of the "core speech", speech which communicates political, social, or religious ideas. It does not apply to commercial speech or the communication which no more than proposes a commercial transaction. ***(Beda Reviewer 2010 p. 19)***

Scope: Any and all modes of expression are embraced in the guaranty. ***(Nachura p. 147)***

Prior Restraint

Prior restraint means official government restrictions on the press or other forms of expression in advance of actual publication or dissemination.

Forms:

1. System of licensing administered by an executive officer
2. Movie censorship
3. Press censorship
4. Judicial prior restraint – takes form of an injunction against publication ***(Bernas p. 58)***

There need not be total suppression; even restriction of circulation constitutes censorship. ***(Grossjean vs American Press 297 US 233)***

Power of MTRCB can be exercised only for purposes of classification, not censorship.

Live TV Coverage may be prohibited since the right of the accused must prevail over the right of the public to information and freedom of the press. ***(AM No. 01-4-03-SC)***

Can only be justified under the clear and present danger test. ***(Viva Productions vs CA GR 123881)***

O'Brien test – a governmental regulation is valid if:

a) it is within the constitutional power of the government;
b) it furthers an important or substantial governmental interest;
c) the governmental interest is unrelated to the suppression of expression;
d) the incidental restriction on the freedom is no greater than is essential to the furtherance of that interest.

In the case of ***Chavez vs Gonzales***, (545 SCRA 4451), it was held that the alleged violation of the Anti-Wiretapping Law is not in itself a ground to impose a prior restraint on the airing of the Garci Tapes because the Constitution expressly prohibits the enactment of any law, and that includes anti-wiretapping laws, curtailing freedom of expression

Subsequent Punishment

Freedom from subsequent punishment is not absolute, and may be properly regulated in the interest of the public. The State may validly impose penal and/or admin sanctions such as the following:

A. Libel – Art 353 RPC.There is presumption of malice here with exceptions under the RPC provision. The remedy of the person libeled 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. ***(Baguio Midland vs CA GR 107566.)***

B. Obscenity

Tests of Obscenity:

1. whether the average person, applying contemporary standards, would find 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 law;
3. whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Determination as to what is obscene is a judicial function.

C. Fighting words – those which by their very utterance, inflict injury or tend to incite an immediate breach of the peace – since they are no essential part

of any exposition of ideas, are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. ***(Chaplinsky vs New Hampshire 315 US 568)***

Content-Based and Content-Neutral Regulations

a) Content-based Regulations

These restrictions are imposed because of the content of the speech itself; distort public debate, have improper motivation, and are usually imposed because of fear how people will react to a particular speech. This is subject to a clear-and-present danger rule. ***(p. 171 Duka)***

xxx what to read or see or hear, regulations which are content-based – those which either approve or disapprove based on the contents of the expression, such a favoring or disfavoring some topics – are subjected to strict scrutiny, ie the government is required to justify them by the presence of a compelling state interest and a showing of an absence of any other means by which the state objective could be attained. These restrictions, it will be seen, are censorial and therefore they bear a heavy presumption of constitutional invalidity. In addition, they will be tested for possible overbreadth and vagueness. ***(Osmeña vs COMELEC 288 SCRA 447)***

b) Content-Neutral Regulations

These restrictions are not concerned with the content of speech. These regulations need only a substantial governmental interest to support them. A deferential standard of review will suffice to test their validity. The restriction simply regulates the time, place or manner of the dissemination of speech or expression.

c) Facial Challenges and the Overbreadth Doctrine (government act necessary)

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. Invalidation of the statute “on its face”, rather than “as applied”, is permitted in the interest of preventing a “chilling effect” on freedom oof expression. ***(Cruz vs DENR GR 135385.)***

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 vs Sandiganbayan GR 148560).*** (Termed as facial review USING the overbreadth doctrine in the case of David vs Macapagal-Arroyo)

In the latter case, the following doctrines were made:

1. 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.

2. Facial invalidation of laws is considered a manifestly strong medicine, to be used sparingly and only as a last resort.

In the case of ***Romualdez vs COMELEC*** (573 SCRA 639), it was held that only statutes on free speech, religious freedom and other fundamental rights may be facially challenged; Under no case may ordinary penal statutes be subjected to facial challenges.

Overbreadth Doctrine – prohibits the 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 reachingso broadly into the area of protected freedom***. (p 152 Nachura.)***

The SC in one case held 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. (Chavez vs COMELEC 437 SCRA 415).

In the case of ***Romualdez vs COMELEC*** (553 SCRA 370), it was held that overbreadth and vagueness doctrines may be applied to free speech cases and penal statutes as well.

d) Tests

It is accepted view that prior restraint can only be justified under the clear and present danger test. (refer to discussions above) In ***Schanck vs US*** (No. 437, 438), it was held that the test is used when words are used in such circumstance and of such nature as to create a clear and present danger that will bring about the substantive evil that the State has the right to prevent.

Clear – Causal connection with the danger of the substantive evil arising from the utterance questioned.

Present – time element, identified with imminent and immediate danger; the danger must not only be probable, but very likely inevitable. ***(Gonzales vs COMELEC Np. L – 27833)***

In **"subsequent punishment**", however, there are three tests which are

1) Clear and Present Danger Test;
2) Dangerous Tendency Test; and
3) Balancing of Interests Test.

Dangerous Tendency Test – In ***Cabansag vs 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.

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 Assoc vs Douds 339 US 282).***

It requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation. ***(Zaldivar vs Sandiganbayan.)***

The test applied when two legitimate values not involving national secuirty crimes compete. Involves an appoint of the competing interest. ***(Gonzales v. Comelec).***

In ***Aver v. Capulong and Enrile***, for instance, it is a question of balancing the freedom of expression of the producer and the right to privacy of Enrile.

Grave-but-improbable danger*:* Whether the gravity of the evil, discounted by its improbability, justifies such an invasion of free speech as is necessary to avoid the danger***. (Dennis v. United States, 341 US 494 (1951), quoting Judge Learned Hand.)***

This test was meant to supplant the clear and present danger. They both emphasize the circumstances of the speech, but this latter test consider the weighing of values.

Direct Incitement Test: The constitutional guarantees of free speech and press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation, except where such advocacy or speech is directed to inciting or producing imminent lawless action, and is likely to incite or produce such action. ***[Brandenburg v. Ohio, 395 U.S. 444 (1969), cited in Salonga v. Cruz Pano, 134 SCRA 438 (1985).]***

The test emphasizes the very words uttered:
(a) What words did he utter?
(b) What is the likely result of such utterance?
It criticizes the clear and present danger test for being too dependent on the circumstances. Speaker may, when tested show no incitement but you know the speaker is inciting to sedition.

State Regulation of Different Types of Mass Media

Depending on the form and medium in which speech is being exercised, to that extent may it also affect the extent of governmental power expended. Thus the power applied is not the same in regard to regulation of pure speech as against expressive conduct, the print media vis-à-vis the broadcast media, or that between TV and movies. In the same way, differences in situation between a daily newspaper and a weekly magazine

may call for a different standard of diligence which would affect the liability of damages. Further, while mere possession of obscene materials might not be criminalized, it would be an entirely different matter if the material involves child pornography.

Relevant cases:

Pure speech vs Expressive speech

The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word. ***(Texas vs Johnson 491 US 397)***

Print vs Broadcast media

All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the clear and present danger rule. The clear and present danger test, however, does not lend itself to a simplistic and all embracing interpretations applicable to all utterances in all forums.

All forms of communication are entitled to the broad protection of the freedom of expression clause. Necessarily, however, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.

In American Court in ***Federal Communications Commission vs Pacifica*** (438 US 726), it was held by the US SC that radio broadcasting receives the most limited protection from the free expression clause. First, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion pictures theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or TV, where the listener or viewer is constantly turning in and out. ***(Eastern Broadcasting vs Dans 137 SCRA 628)***

While all forms of communication are entitled to the broad protection of freedom of expression clause, the freedom of film, television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspapers and other print media. ***(Chavez vs Gonzales)***

The broadcast media have also established a uniquely pervasive presence in the lives of all Filipinos. Newspapers and current books are found only in metropolitan areas and in the poblaciones of municipalities accessible to fast and regular transportation. Even here, there are low income masses who find the cost of books, newspapers, and magazines beyond their humble means. Basic needs like food and shelter perforce enjoy higher priorities.

On the otheRhand, the transistor radio is found everywhere. The TV set is also becoming universal. Their message may be simultaneously received by a national or regional audience or listeners including the indifferent and the unwilling who happen to be within reach of a blaring radio or TV set. Unlike readers of the printed work, the radio audience has lesser opportunity to cogitate analyze, and reject the utterance.

Re Broadcast vs Printed media

1st, the difference in treatment, in the main, is in the regulatory scheme applied to broadcast media that is not imposed on traditional print media, and narrowly confined to unprotected speech (e.g. obscenity, porno, seditious and inciting speech) or is based on a compelling government interest that also has constitutional protection, such as national security or the electoral process.

2nd, regardless of the regulatory schemes that broadcast media is subjected to, the Court has consistently held that the clear and present danger test applies to content-based restrictions on media, without making a distinction as to traditional print or broadcast media. ***(Chavez vs Gonzales.)***

Internet

Internet remains largely unregulated, yet the Internet and the broadcast media share similarities, and the rationales used to support broadcast regulation apply equally to the Internet. Thus, it has been argued

that courts, legislative bodies and the government agencies regulating media must agree to regulate both, regulate neither or develop a new regulatory framework and rationale to justify the differential treatment. ***(Chavez vs Gonzales.)***

TV and movies

All that remains to be said is that the ruling is to be limited to the concept of obscenity applicable to motion pictures. It is the consensus of this Court that where television is concerned: a less liberal approach calls for observance. This is so because unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely will be among the avid viewers of the programs therein shown. As was observed by Circuit Court of Appeals Judge Jerome Frank, it is hardly the concern of the law to deal with the sexual fantasies of the adult population. It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young. ***(Gonzales vs Kalaw Katigbak 137 SCRA 717)***

Daily and weekly magazines

Pressure of deadline not a defense in libelous application in a weekly magazine.. While a newspaper should not be held to account for honest mistakes owing to the pressure of a daily deadline, there is no such pressure to meet and no occasion to act with haste in a weekly magazine. ***(Lopez vs CA 34 SCRA 116 (1970) Halos end..No. 3)***

Commercial Speech

Commercial Speech – It is a communication which no more than proposes a commercial transaction Advertisement of goods or services is an example.

To enjoy protection, commercial speech must not be false or misleading ***(Friedman vs Rogers 440 US 1)*** and should not propose an illegal transaction. ***(Pittsburgh Press vs Human Relations Commission 413 US 376.)***

However, even truthful and lawful commercial speech may be regulated if:

1. Government has substantial interest to protect
2. The regulation directly advances that interest

3. It is not more extensive than is necessary to protect the interest. ***(Central Hudson vs Public Service Commission No 79-565.)***

Private and Government Speech (?)

Heckler's Veto

It is where, literally, the opposition of a rowdy or obstreperous crowd might as well drown out the voice of the one seeking to exercise the right to speak. In legal context, that might come in the form of regulations tending to prevent the expression of an idea in view of the reaction that might be engendered among those opposed to it. This may be in the guise of a permit requirement in the holding of rallies, parades or demonstrations conditioned on the payment of a fee computed on the basis of the cost needed to keep order in view of the expected opposition by persons holding contrary views . ***(Forsyth County vs Nationalist Movement. 505 US 123)***

8. FREEDOM OF RELIGION

Art. III, Sec. 5. 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.

a. Non-Establishment Clause

The clause prohibits excessive government entanglement with, endorsement or disapproval of religion. ***(Victoriano v. Elizalde Rope Workers Union 59 SCRA 54)***

The clause prohibits the State from establishing a religion. In assessing the validity of the law, the questions to be asked are:

a. Is the purpose of the law religious, or is it secular?
b. Does it or does it not inhibit or advance religion?
c. Is its effect to promote or to avoid an excessive entanglement between the State and religious matters in religion?

The **Non-Establishment clause** is violated when the State gives any manifest support to any one religion, even if nothing is done against the individual.

Purpose of the NE Clause

Voluntarism and insulation of the political process from interfaith dissension.

Other Constitutional provisions which support the non-establishment clause:

Sec 2(5), Article IX-C (A religious sect or denomination cannot be registered a a political party)

Sec 5(2), Article VI (No sectoral representative from the religious sector)

Sec 29(2), Article VI (Prohibition against the use of public money or property for the benefit of religion, or of any priest, minister, or ecclesiastic)

Exceptions to the NE Clause: ***(p. 60 Nachura)***

Sec 28(3), Art VI (exemption from taxation of properties ADE for religious purposes)

Sec 4(2), Article XIV (citizenship requirement of ownership of educational institutions except those established by religious groups and mission boards)

Sec 3(3), Article XIV (optional religious instruction)

Sec 29(2) Article VI (appropriation allowed to minister or ecclesiastic)

Scope:

1. The State cannot set-up a church
2. The State cannot pass laws which aid one religion, all religions or prefer one over another.
3. The State cannot influence a person to remain or to go away from a church against his will.
4. The State cannot force a person to profess a belief or disbelief in any religion***. (p. 212-213 Duka)***

Intramural religious dispute – Where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more. ***(Gonzales vs Archbishop 51 Phil 420)***

In matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunal. ***(Long and Almeria vs Basa GR 134963-64.)***

While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters. ***(Austria vs NLRC GR 124382).***

Ecclesiastical affair – 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. ***(p. 162 Nachura)***

When is government aid allowable?

When all the following requisites are present:

1. must have a secular legislative purpose
2. must have a primary effect that neither advances nor inhibits religion
3. must not require excessive entanglement with recipient institutions.

b) Free Exercise clause

Aspects:

1. **Freedom to believe** – Absolute
2. **Freedom to act according to one's belief** –

Where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State.

The exercise of religious freedom does not exempt anyone from compliance with reasonable requirements of the law, including civil service laws. ***(AM No. 02-2-10 SC)***

Compelling State Interest Test

In applying the test:

The 1st inquiry is whether respondent's right to religious freedom has been burdened.

The 2nd step is to ascertain respondent's sincerity in her religious belief.

The 3rd inquiry is whether there is a compelling state interest the burden of evidence of which must be discharged by the government. ***(Estrada vs Escritor; AM No P-02-1651)***

Compelling means that the violation will erode the very fabric of the state that will also protect the freedom. ***(Estrada vs Escritor; AM No P-02-1651)***

The constitution's religion clauses prescribe not strict but 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. ***(Estrada vs Escritor; AM No P-02-1651)***

Some doctrines:

Ebralinag vs Division upheld the petitioner's right of the petitioners to refuse to salute the Philippine flag on account of religious scruples

Invocation of religious scruples in order to avoid military service was brushed by the SC in ***People vs Zosa***

SC upheld the validity of RA 3350, exempting members of religious sect from being compelled to join a labor union.

This guarantee includes the right to disseminate religious information, and any restraint on such right can be justified only on the ground of clear-and-present-danger test.

9. LIBERTY OF ABODE AND FREEDOM OF MOVEMENT

Art 13(2) UDHR, - provide 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 provide that no one shall be arbitrarily deprived of the right to enter his own country.

Liberty guaranteed by the Constitutional provision

Freedom to choose and change one's place of abode. (**See ☞RA 8368 and RA 7279**)

Freedom to travel both within the country and outside. ***(Bernas p. 89)***

Purpose

To further emphasize the individual's liberty as safeguarded in general terms in the due process clause. ***(p 168 Cruz 2000 ed.)***

Squatting now decriminalized under RA 8368 ***(Duka p. 222)***

Limitations

Limitations on liberty of abode – lawful order of the Court

Some recognized exceptions to the right

1. A lessee may be judicially ejected for violation of his contractual duties
2. Forced evacuation in volcanic eruption. ***(p. 169 Cruz 2000 ed)***
3. ***Rubi vs Provincial Board of Mindoro*** requiring non-Christian to reside in a reservation (validated by the court under PP)

Limitations on the liberty to travel – Interest of national security, public safety, or public health, as may be provided by law; including lawful order of the court (as when an accused is released on bail). ***(Nachura p. 165)***

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. ***(Manotoc vs CA 142 SCRA 149)***

Re: Hold Departure Order. In ***Defensor-Santiago vs Vasquez*** (217 SCRA 633), the Court further clarified the foregoing principles:

1) HDO is but an exercise of the court's inherent power to preserve and maintain the effectiveness of its jurisdiction over the case and over the person of the accused,

2) by posting bail, the accused holds herself amenable to the orders and processes of the court thus, she may be legally prohibited from leaving the country,

3) parties with pending cases should apply for permission to leave the country from the same courts

Some recognized exceptions to the right

1. A person facing criminal charges may be restrained by the court from leaving the country or, if abroad, compelled to return.
2. The judge may prevent a person from entering certain premises under dispute or declared off-limits by the proper authorities.
3. Health officers may restrict access to contaminated areas and also quarantine those already exposed to disease sought to be contained.

4. Secretary of State may regulate or even prohibit the travel of citizens to hostile countries to prevent possible international misunderstanding and conflict***. (p 169 Cruz 2000 ed)***

Return to one's Country

In ***Marcos vs Manglapus*** (178 SCRA 660), the SC sustained the refusal of the government to allow the petitioner's return to the Philippines, on the ground that it would endanger national security. The right to travel and the liberty of abode are distinct from the right to return to one's country, as shown by the fact the UDHR and the Covenant on HR have separate gurantees for these. Hence the right to return to one's country is not covered by the specific right to travel and liberty of abode. Consequently, the requirements prescribed in Section 6 relative to the right to travel and the liberty of abode do not apply. (Implicitly the Court says that the right to return, not being specifically guaranteed, must be treated simply under the general rubric of liberty.)

The Court also said that the right to travel guaranteed in the Constitution involves the right to travel within the country, the right to leave the country, but not the right to retun to one's country. It arrived at this conclusion from the fact that the Universal Declaration of HR has one provision for the right to move within the country and out of the country and another for the right to return to one's country. Thus, whereas the UDHR is normally used to affirm or supplement rights in domestic law, the Court chose to use it to curtail the guarantee of our domestic law. ***(Bernas, *Thick book, p. 379)***

10. RIGHT TO INFORMATION

Rights granted are:
1. The right to information on matters of public concern
2. The corollary right of access to official record and documents (given as an implementation of the right to information) . ***(p. 91 Bernas)***

Access to information on matters of public concern is essential to the proper exercise of freedom of expression. ***(Cruz 2000 ed p 246)***

☑**Take Note**: These are POLITICAL RIGHTS available to citizens only.

Under **RA 6713**, public officials and employees are mandated to provide information on their policies and procedures in clear and understandable language, and ensure openness of information, public consultations and hearings whenever appropriate", except when otherwise provided by law or when required by the public interest. In particular, the law mandates free public access, at reasonable hours, to the annual performance reports of offices and agencies of GOCCs and the statement of assets, liabilities and financial disclosures of all public officials and employees.

Limitations

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 full disclosure is confined to transactions involving public interest and is subject to reasonable conditions prescribed by law.

The terms public concerns and public interest have eluded precise definition. But both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives or simply because such matters naturally whet the interest of an ordinary citizen. At the end of the day, it is for the courts to determine, on a case to case basis, whether or not an issue is of interest or importance to the public. ***(BA-RA 7941 vs COMELEC GR 177271)***

However, the following are recognized restrictions:

1. National security matters and intelligence information

There is governmental privilege against public disclosure with respect to state secrets regarding the military, diplomatic and other national security matters. But where there is no need to protect such state secrets, the privilege may not be invoked to withhold documents and other information, provided that they are examined in strict confidence and given scrupulous protection.

2. Trade secrets and banking transactions – Ruling in ***Garcia vs Board of Investments***; **See:** Bank Secrecy Law

3. Criminal matters

Also excluded are classified law enforcement matters, such as those relating to the apprehension, the prosecution and the detention of criminals, which courts may not inquire into prior to such to such arrest, detention and prosecution.

4. Other confidential information

The Ethical Standards Act further prohibits public officials and employees from using or divulging confidential or classified information

officially known to them by reason of their office and not made available to the public.

These include, diplomatic correspondence, closed door Cabinet meetings and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court. ***(p. 235 Duka)***

5. Privileged information rooted in separation of powers *(p. 166 Nachura)*

In ***Legaspi vs CSC*** , 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.

Publication of Laws and Regulations

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. ***(Tanada vs Tuvera 146 SCRA 446)***

See: ☞EO 200 and Article 2 CC

Circulars having been issued for the implementation of the law authorizing its issuance has the force and effect of law, according to settled jurisprudence. ***(US vs Tupas Molina 29 Phil 119.)***

Circulars which are mere statements of general policy as to how the law should be construed do not need presidential approval and publication. ***(Victoria Milling Corp vs Social Security Commission L-16704.)***

Rule on publication is applied to executive orders and admin rules the same having the force of the law. ***(p. 16 De Leon 2002 ed.)***

Access to Court Records

In ***Baldoza vs Dimaano*** (71 SCRA 14), the SC sustained the right of a municipal mayor to examine judicial records , subject to reasonable rules and conditions. Quoting from ***Subido vs 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 ***Hilado vs Reyes***, (GR 163155), where petitioners, who had filed an action for damages against the decedent during its lifetime and whose claims for damages were included in the inventory of the 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 the probate court, the SC 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 ***Lantaco vs Llamas***, (108 SCRA 502), where a judge gave petitioners a run-around in obtaining a copy of a court decision, the Court said: "While public officers in custody or control of public records have the discretion to regulate the manner in which such records may be inspected, examined or copied by interested persons, such discretion does not carry with it the authority to prohibit access, inspection, examination, or copying.

Right to Information Relative to Government Contract Negotiations

In the case of ***Chavez vs PEA***, it was held that the constitutional right to information includes official information on on-going negotiations before a final contract.

The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order. Information, for instance, on on-going evaluation or review of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right of information.

While the evaluation or review is still on-going, there are no "official acts, transactions or decisions" on the bids or proposals. However, one the committee makes it official recommendation; there arises a definite proposition on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such proposition. Congress has also prescribed other limitations on the right to information in several legislations.

In ***Chavez vs PCGG***, it was held that it is incumbent upon the PCGG, and its officers, as well as other government representatives, to disclose

sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information though must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory stage".

Right to Information Relative to Diplomatic Negotiations

In ***PMPF v. Manglapus***, the therein petitioners were seeking information from the President's representatives on the state of the then on-going negotiations of the RP-US Military Bases Agreement.

The Court denied the petition, stressing that "secrecy of negotiations with foreign countries is not violative of the constitutional provisions of freedom of speech or of the press nor of the freedom of access to information." The Resolution went on to state, thus:

The nature of diplomacy requires centralization of authority and expedition of decision which are inherent in executive action. Another essential characteristic of diplomacy is its confidential nature.

In ***Akbayan vs Aquino***, it was held that The privileged character of diplomatic negotiations has been recognized in this jurisdiction. In discussing valid limitations on the right to information, the Court in ***Chavez v. PCGG*** held that "information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest.

Applying the principles adopted in ***PMPF v. Manglapus***, it is clear that while the final text of the JPEPA may not be kept perpetually confidential – since there should be "ample opportunity for discussion before [a treaty] is approved" – the offers exchanged by the parties during the 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.

11. RIGHT OF ASSOCIATION

Meaning of the provision: All it means is that the right to form associations shall not be impaired without due process of law. It includes the right not to join. ***(p. 97 Bernas)***

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. ***(p. 169 Nachura).***

Right not absolute however.

1. In ***Occena vs COMELEC***, it was held that the right was not violated when political parties were prohibited from participating the barangay elections in order to insure the partisanship of political candidates; political neutrality is needed to discharge the duties of barangay officials.

2. In ***Victoriano vs Elialde Rope***, SC 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 such affiliation.

3. Art 245 of the Labor Code.
4. Compulsory membership of lawyers in the IBP held in In Re: Edillon.
5. Anti Subversion Act

The right to unionize or to form organizations is now explicitly recognized and granted to employees in both governmental and the private. Art III; Article XIII, Sec 3 Constitution.

As to strike, involving government employees, one has to determine whether the government corporation was established under the Corporation Code or an original charter.

In the absence of a statute, public employees do not have the right to engage in concerted work stoppages for any purpose. ***(GSIS vs KMG GR 170132)***

Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor—Mgt Council for appropriate action. ***(SSSEA vs CA GR 85279)***

12. EMINENT DOMAIN

a) Concept - Discussed
b) Expansive Concept of Public Use - Discussed
c) JC - Discussed
    1) Determination - Discussed
    2) Effect of Delay – Please refer to previous discussions as well

As to interest:

Nepomuceno vs Surigao 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.

NAPOCOR vs Angas (208 SCRA 542) held that interest must be fixed at 6% pa as prescribed by Art 2209 CC as the kind of interest here is by way of damages.

Title to property

Title does not pass until after payment of JC. Thus, the owner of land subject to expropriation may still dispose of the same before payment of JC. ***(LBP vs CA 258 SCRA 404)***

Exception herein is in case of agrarian reform in the case of ***Land Bank vs CA*** (258 SCRA 404)

d) Abandonment of intended Use and Right of Repurchase - Please refer to previous discussions as well ***Heirs of Moreno vs Mactan-Cebu International Airport*** (Prop devoted to pvt use)

xxx however, if the condemning authority ceases to use the property to a public purpose, property reverts to the owner in fee simple. The government's taking of private property, and then transferring it to private persons under the guise of public purpose is the despotism found in the immense power of ED. Xxx

Right to repurchase or re-acquire the property

The property owner's right to repurchase the property depends upon the character of the title acquired by the expropriator, ie 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 reacquire the property. ***(MCIAA vs CA GR 139495)***

e) Miscellaneous Application

13. CONTRACT CLAUSE

As to intrusions by private persons into contractual obligations, the Court has said that this is governed by statutory enactments not by the impairment clause of the Constitution. The sole purpose of this provision is to safeguard the integrity of valid contractual agreements against unwarranted interference by the State in the form of laws. ***(New Sampaguita vs PNB 435 SCRA 565)***

We all know that contracts must yield to the State's exercise of power. However, one has to know whether the State's exercise of PP is valid.

Contemporary Application of the Contract Clause

In the case of ***CBC vs ADB*** (GR 172192), it was held that the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power.

Considerations which prevail over contracts: Demands of police power prevail over contracts. ***(p. 498 Suarez).*** However, some books also say that eminent domain and the State's power of taxation also does.

14. LEGAL ASSISTANCE AND FREE ACCESS TO COURTS

The right to litigate is an escape valve to relieve the pressures of personal disagreements that might otherwise explode into physical confrontation. ***(Que vs CA 169 SCRA 137)***

While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice. ***(Miranda vs Arizona 384 US 436.)***

Even in case, xxx, where the accused had signified his intent to withdraw his appeal, the court is required to inquire into the reason for the

withdrawal. Where it finds the sole reason for the withdrawal to be poverty, as in this case, the court must assign a counsel de officio, for despite such withdrawal, the duty to protect the rights of the accused subsists and perhaps with greater reason. ***(People vs Rio 201 SCRA 702)***

Indigent party – 1997 Rules of CivPro Sec 21 Rule 3. Indigence include an exemption from payment of docket and other lawful fees and of transcripts of steno notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides. ***(Duka p. 257)***

Read ☞RA 9406 – PAO

It must be pointed out that not simply because there is a guarantee of free access to the courts that Philippine Courts could and should always assume jurisdiction over cases brought by its citizens.

It was held in ***Santos III vs Northwest*** (210 SCRA 256), the constitutional guaranty of access to courts refers only to courts with appropriate jurisdiction as defined by law. It does not mean that a person can go to any court for redress of his grievances regardless of the nature or value of his claim.

15. RIGHTS OF SUSPECTS

Availability

The Miranda doctrine embodied in Sec 12 Art III are available only during custodial investigation or in-custody interrogation of accused persons. ***(People vs Judge Ayson 175 SCRA 216.)***

Custodial Investigation 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 a significant way. The rule begins to operate 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 vs De la Cruz GR 118866-68)***

The guarantee does not apply :

1. To spontaneous statement, not elicited through questioning by the authorities but given in an ordinary manner whereby the suspect orally admitted having committed the offense;
2. Admissions or confessions made by a suspect before he was placed under custodial investigation.;
3. A police line-up is not considered a part of custodial inquest. However, when a police line-up or a show-up was made during custodial investigation, any identification of an uncounselled accused made in a police line-up or in a show-up AFTER the start of the custodial investigation is inadmissible in evidence against him. ***(People vs Escordial)***
4. Normal audit investigations
5. Investigation conducted by the employer.
6. Investigation conducted by the CSC.
7. Counter-affidavit submitted by the respondent during preliminary investigation is admissible in evidence, because PI is not part of custodial investigation . ***(p. 175 Nachura)***
8. Booking sheet and arrest report, the same not being admission or confession of any incriminating circumstance.
9. Photograph or paraffin test as he is not yet under custodial investigation..

Read ☞RA 7438 which states that 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 the law.

Rights available:

a) To remain silent

b) To competent and independent counsel c)To be informed of such right

Requisites

Right to Remain Silent

If the suspect refuses to give a statement, no adverse inference shall be made from his refusal to answer questions

Right to Competent and Independent Counsel

When available – at all stages of the investigation ***(People vs Hassan 157 SCRA 261)***

It is not enough that that the subject is informed of such right; he should also be asked if he wants to avail of the same and should be told that he can ask for counsel if he so desires or that one will be provided him at his request. ***(People vs Agustin 240 SCRA 541)***

Competent

Includes being effective and vigilant. He must ne one devoted to his client's cause in a manner that really protects him and not one who throws in only a lackadaistical effort. His assistance must be continuous, from beginning to end. (***People vs Rodriguez 341 SCRA 645)***.

Thus, the lawyer must be present at all stages of the interview, counseling or advising caution reasonably at every turn of the investigation, and stopping the interrogation once in a while either to give advice to the accused that he may either continue, choose to remain silent or terminate the interview. What is required is meaningful advocacy of the rights of the person undergoing questioning. ***(People vs Velarde 348 SCRA 646)***

Independent Counsel of Choice

The counsel must be one whose interests do not run counter to the intended representation. He should not be serving two masters at the same time. ***(People vs Barasina 229 SCRA 450)***

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. ***(People vs Espiritu GR 128287)***

However, the rule is not intended as a deterrent to the accused from confession of guilt if he voluntarily and intelligently so desires but to protect the accused from admitting what he is coerced to admit although untrue. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him, but rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false. The counsel, however, should never prevent an accused

from freely and voluntarily telling the truth. ***(People v. Base, G.R. No. 109773)***

While the initial choice of the lawyer in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really 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 where he never raised any objection against the former's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer. ***(People v. Gallardo, et al., G.R. No. 113684)***

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 has been filed, and non-custodial interrogation after the accused has been formally charged, are considered critical pre-trial stages in the criminal process. ***(People vs Espanola GR 119308)***

To be informed of such rights

This contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. ***(People vs Nicandro. 141 SCRA 289)***

Waiver

2 Kinds

a) Waiver at the moment of giving incriminating statements

Sec 2d of RA 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.

b) Waiver with regard to the admissibility during trial of an uncounselled or coerced extrajudicial confession

If no timely objection is made to the introduction of such tainted confessions or admissions, the same would be admissible on the ground that the accused had waived his right not to have the same be considered as part of the evidence against him. (***People vs Samus 389 SCRA 93)***

16. RIGHTS OF THE ACCUSED

a) Criminal Due Process

Requisites:

1. Accused has been heard in a court of competent jurisdiction
2. The accused is proceeded against under the orderly processes of law
3. Accused was given notice and the opportunity to be heard
4. Judgment rendered was within the authority of a constitutional law.

Compared to Section 1 of Article III: **Section 1 speaks of due process in general**, both in its substantive and procedural aspects. **Section 14 refers to the procedural component only**. It catalogues the essentials of due process in a criminal prosecution.

Right to PI : Although of statutory origin only, its denial when the law provides for it is a denieal of criminal due process. Right to PI is not mere formal or technical right but is a substantive right. ***(Go vs CA 206 SCRA 138)***

In order to disqualify a judge on the ground of bias and prejudice, the movant must prove such bias by clear and convincing evidence. ***(Webb vs People GR 127262).***

But where 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 vs Castillo 289 SCRA 213).***

The State, and more so, the offended party is also entitled to due process of law. (***p, 199 Nachura)***

For the purpose of satisfying the due process requirements, it is also necessary that the accused have an understanding of what the proceeding is all about. Accordingly, he would have to be assisted and informed in such

a language and in a manner that he can understand and comprehend what is being conveyed. This means that he has to be given, for instance, a counsel with whom he could communicate and qualified and competent interpreter to assist him. ***(People vs Cuizon 256 SCRA 325)***

b) Bail

Bail is the security given for the release of a person in custody oof the law, furnished by him or a bondsman, conditioned upon his appearance before any court as may be required. ***(Rule 114 Sec 1 ROC)***

Origin – This emanates from the right to be presumed innocent

Who is entitled? Any person under detention, even if no formal charges have yet been filed.

Where to file

a) Bail in the amount fixed may be filed with

1) the court where the case is pending, or in the absence of unavailability of the judge thereof, with

2) any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality.

3) If the accused is arrested in a province, city, or municipality, other than where the case is pending, bail may be filed with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judged or municipal circuit trial judge thereto.

b) Whenever the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application can only be filed in

1) the court where the case is pending, whether on preliminary investigation, trial, or appeal.

c) Any person who is in custody who is not yet charged in court may apply for bail with

1) any court in the province, city or municipality where he is held. Sec. 17, Rule 114, ROC

A person who appealed his conviction of homicide on a murder charge to the Court of Appeals, may be denied bail by the Court of Appeals because he could be convicted of a capital offense. ***(Obosa v. Court of Appeals 266 SCRA 281)***

Duties of the trial judge where an application for bail is filed:

a. give reasonable notice to the prosecutor or require him to submit his recommendation. ***(Sec. 18, Rule 114, ROC)***

b. Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion ***(Secs. 7 and 8)***

c. Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution.

d. If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond. ***(Sec. 19; Basco v. Judge Rapatalo; A.M. No. RTJ-96-1335)***

Duties of the Court when accused is charged with an offense punishable by RP or higher:

1. A hearing on the motion for bail must be conducted by the judge to determine whether or not the evidence of guilt is strong
2. Prosecution must be given an opportunity to present all evidence that it may wish to introduce on the probable guilt of the accused before the court resolves the motion for bail.
3. 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 vs Judge Sison 243 SCRA 284)***

Hearing is mandatory when accused is charged with an offense punishable by death, reclusion perpetua, or life imprisonment. The judge shall conduct a hearing whether summary or otherwise , not only to take into account the guidelines set forth under the Rules for the grant of bail, but primarily to determine the existence of strong evidence of guilt or the lack of it, against the accused, only for purposes of bail. If the evidence of guilt is not strong, bail becomes a matter of right. ***(People v. Hapa, G.R. No. 125698)***

Due process to be given to prosecution in application for bail. A bail application does not only involve the right of the accused to temporary liberty, but likewise the right of the State to protect the people and the peace of the

community from dangerous elements. "To appreciate the strength or weakness of the evidence of guilt, the prosecution must be consulted or heard. It is equally entitled as the accused to due process." The prosecution must be given ample opportunity to show that the evidence of guilt is strong. ***(People v. Hon. Antona, etc., et al., G.R. No. 137681)***

Rationale for giving due process to prosecution in bail applications. By the very nature of deciding applications for bail, it based on evidence presented by the prosecution that judicial discretion is exercised in determining whether the evidence of guilt of the accused is strong.

The determination of whether the evidence of guilt is strong is a matter of judicial discretion. Though not absolute nor beyond control, the discretion of the trial court must be sound, and exercised within reasonable bounds. Discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after the evaluation of the evidence submitted by the prosecution and the accused.

Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness. ***(People v. Hon. Antona, etc., et al., G.R. No. 137681***)

The evidence presented during the bail hearing shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside of the Philippines or otherwise unable to testify. ***(Sec. 8, Rule 114, ROC)***

Exceptions to the right to bail

When charged with an offense punishable by RP (or higher) and evidence of guilt is strong.

Where the accused is charged with an offense punishable by RP, 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. (***Carpio vs Maglalang 196 SCRA 41)***

Rules:

Before or after conviction in the MTC, MTCC – Right to bail is absolute

RTC – Before conviction (other than RP) – Right to bail is absolute

After conviction (other than RP) – Entitlement to bail is discretionary w/ Courts.

Charge of RP – Determine existence of strong evidence of guilt (p. 192 Nachura)

Conviction of RP – Denied

☑**Take Note**: Traditionally, the right to bail is not available to the military

Arula vs Espino (28 SCRA 540) held 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.

c) Presumption of Innocence

May be invoked only by an individual accused of a criminal offense; a corporate entity has no personality to invoke the same. ***(Feeder vs CA 197 SCRA 842)***

Presumption that official duty was regularly performed cannot by itself, prevail over the constitutional presumption of innocence. ***(People vs Martos 211 SCRA 805)***

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 vs Acuram 209 SCRA 281)***

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. ***(People vs Burton 268 SCRA 531)***

The 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. ***(p. 200 Nachura)***

In order that circumstantial evidence may warrant conviction the following requisites must be present:

1. there is more than 1 circumstance
2. the facts from which the inferences are derived are proven
3. the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. ***(People vs Bato GR 113804)***

Equipose Rule – Applies when the evidence is so evenly balanced in which case the constitutional presumption of innocence should tilt the scales in favor of the accused. ***(Corpus vs People 194 SCRA 73).***

d) Right to be Heard

Elements of the general right to be heard:

1. the right to be present at the trial
2. the right to counsel
3. the right to an impartial judge
4. right of confrontation
5. the right to compulsory process to secure the attendance of the witness. ***(Bernas p 150)***

Scope of the right to be present at the trial

Covers only the period from arraignment to promulgation of sentence ***(US vs Beecham 23 Phil 259.)***

However, this has been modified by Sec 14(2) which says that "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

Conditions for waiver of the right to be present at the trial

The right may be waived provided that after arraignment he may be COMPELLED to appear for purpose of identification by the witnesses of the prosecution OR provided he unqualifiedly admits in open court after his arraignment that he is the person named as the defendant in the case on trial. Reason for requiring the presence of the accused, despite his waiver, is, if allowed to be absent in all the stages of the proceeding without giving the People's witnesses the opportunity to identify him in court, he may in his defense say that he was never identified as the person charged in the

information and, therefore, is entitled to acquittal. ***(People vs Presiding Judge GR L-64731)***

Requisites of a valid trial in absentia

1. accused has been arraigned
2. he has been duly notified of the trial
3. his failure to appear is unjustifiable

e) Assistance of Counsel

The right guaranteed by the Constitution is to an EFFECTIVE counsel, not necessarily an INTELLIGENT one. ***(People vs Liwanag 363 SCRA 62)***

Duty imposed on the judge by the guaranty

If the defendant appears without counsel he must be informed by the court that he has a right to have a counsel before being arraigned, and must be asked if he desires the aid of a counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him. This is a right which the defendant should not be deprived of, and failure of the court to assign counsel or, after counsel has been assigned, require him to perform this duty by appearing and defending the accused would be sufficient cause for the reversal of the case. ***(US vs Gimeno 1 Phil 236)***

Pre-arraignment duties of the Judge

See 4-fold duty under Rule 116 Sec 6 of the ROC.

In criminal cases, there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. ***(People vs Holgado 85 Phil 752)***

It is also elementary that the accused himself has the primary right to choose his own counsel. However, considering the State's and the offended party's right to speedy and adequate justice, the court may restrict his option to retain a orivate counsel if the accused insists on an attorney he cannot afford, or if the chosen counsel is not a member of the Bar, or if the attorney declines to represent the accused for a valid reason. ***(People vs Rivera 362 SCRA 153)***

The counsel of course must be a lawyer, though this may be subsequently waived provided it is done with the assistance of a bona fide

lawyer. People vs Tulin 364 SCRA 10. In the case of Sayson vs People 166 SCRA 680, it was held that this right can as well be waived such as when an accused repeatedly fails to show up with his counsel de parte without any justifiable reason. Likewise, he may not insist on having a counsel de officio appointed for him throughout the trial if by his actions he is deemed to have waived the same since the right to have counsel appointed for him is only MANDATORY DURING THE ARRAIGNMENT.

The preference in the choice of counsel pertains more aptly and specifically to a person UNDER INVESTIGATION rather than one who is the accused in criminal prosecution. ***(Amion vs Judge Chiongson; AM NO. RTJ-97-1371)***

f) Right to be Informed

Objectives:

To furnish the accused with such a description of the charge against him as will enable him to make his defense.

To avail himself of his conviction or acquittal for protection against a further prosecution for the same cause

To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one is had. ***(US vs Cruikshank 92 US 542)***

Requisites: The information must state -

1. name of the accused
2. the designation given by the offense by statute
3. statement of the acts or omissions so complained of as constituting the offense
4. name of the offended party
5. approximate time and date of the commission
6. place where the offense had been committed

The process of informing is basically done through arraignment whereby the accused is apprised of the charge against him, including the acts or omissions he is supposed to have done or failed to do. In this regard, the requirement that the Information should be read to the accused in a language or dialect known to him is mandatory and that it must be strictly complied with as it is intended to protect the constitutional right to be

informed of the nature and cause of the accusation against him, a part of due process. (***People vs Ong 432 SCRA 470)***.

In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged.. Since, an accused cannot be convicted of a crime for which he was not charged . ***(Pecho vs People 262 SCRA 518)***

In order that this requirement may be satisfied, facts must be stated; not conclusions of law. ***(Pecho vs People GR 111399)***

Right to be informed of the nature and cause of the accusation may not be waived. Indeed, the defense may waive their right to enter a plea and let the court enter a plea of not guilty in their behalf. However, it becomes 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 their refusal to the reading of the complaint or information. ***(People vs Dy GR 115236-37)***

Variance doctrine – In spite of the difference between the crime that was charged and that which was eventually proved, the accused still may be convicted of whatever offense that was proved even if not specifically set out in the Information provided it was included in what was charged. ***(Teves vs Sandiganbayan 447 SCRA 309)***

Right to be informed vis-a-vis aggravating circumstances

Under the law, it is now required that AC, whether generic or qualifying, must be alleged in the Information or Complaint in order to be appreciated. ***(People vs Buada 391 SCRA 251).***

This has not always been the rule, however, as it was then held that aggravating and qualifying circumstances whch were not alleged but proved during trial may be appreciated as generic AC for purposes of imposing the proper penalty. ***(People vs Ramos 296 SCRA 559.)***

Waiver:

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 vs Bryan GR 115236-37)***

Failure to object to the multiple offenses alleged in the criminal information during the arraignment is deemed a waiver of the right. ***(Abalos vs People GR 136994)***

An information which lacks certain material allegations 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 vs Palarca GR 146020***

g) Right to Speedy and Impartial Trial

Speedy trial – a trial free from vexatious, capricious, and oppressive delays. But justice and fairness, not speed, are the objectives. ***(Acevedo vs Sarmiento 36 SCRA 247)***

The right is relative; what offends the right are unjustified postponements which prolong trial for an unreasonable length of time. ***(People vs Tampal 244 SCRA 202)***

Further, even as the right to a speedy trial is guaranteed to the accused, the same should not be utilized to deprive the State of a reasonable opportunity of fairly indicting and prosecuting criminals. ***(Domingo vs Sandiganbayan 322 SCRA 655)***

Where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance for more than a year, the accused is entitled to relief by a proceeding in mandamus to compel a dismissal of the information, or if he be restrained of his liberty, by habeas corpus to obtain his freedom. ***(Conde vs Rivera 45 Phil 650)***

Right to prompt disposition and judgment – covered by Sec 16 Art III of the Constitution. This provision is also relative. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory. In the determination of whether or not the right to a speedy trial has been violated, certain factors may be considered and balanced against each other. These are length of delay, reason for the delay, assertion if the right or failure to assert it and prejudice caused by the delay. Same factors may as well be considered in “speedy disposition. ***(Guerrero vs CA 257 SCRA 703)***

While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused the 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 wok against and preclude the people's equally important right to public justice. ***(Guerrero vs CA 257 SCRA 703)***
Read ☞Speedy Trial Act of 1998

In determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case.

The right to a speedy trial is deemed violated when:

1. the proceedings are attended by VCO delays
2. when unjustified postponements are asked and secured
3. when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.

In the absence of a showing that delays were unreasonable and capricious, the State should not be deprived of a reasonable opportunity of prosecuting an accused. ***(People vs Tee 395 SCRA 419)***

☑**Take Note**: Dismissal based on right to speedy trial amounts to an acquittal. ***(Marcos vs Sandiganbayan 297 SCRA 95)***

Impartial Trial

Accused is entitled to the cold neutrality of an impartial judge . ***(Nachura p. 208).*** But the impartiality of the judge cannot be assailed on the ground that he propounded clarificatory (not adversarial; e.g. cross-examination questions) questions to the accused. ***(People vs Castillo GR 120282).***

And not only must he be impartial. He must appear to be so also, for perceptions could go a long way in crediting the credibility of his dispositions. ***(People vs Zheng Bai Hui 338 SCRA 420)***

A trial judge should not participate in the examination of witnesses as to create the impression that he is allied with the prosecution.

xxx Examination of witnesses is the more appropriate function of the counsel, and the instances are rare and the conditions exceptional which will justify the presiding judge in conducting an extensive examination. It is always embarrassing for counsel to object to what he may deem improper questions by the court. ***(Tabuena vs Sandiganbayan 268 SCRA 332)***

Pervasive publicity is not per se prejudicial to the right of the accused to a fair trial. ***(Garcia vs Domingo 52 SCRA 143)*** There must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity. ***(Martelino vs Alejandro)***

Public Trial

Purpose is to safeguard the proceedings against any attempts to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. ***(In re Oliver 333 US 270)***

A public trial is not synonymous with 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. ***(AM No 01-4-03-SC).***

This does not preclude the courts from excluding the public, however, where the subject matter is sensitive or otherwise dictated by the nature of the proceedings, as in rape cases where the audience might be more interested as salacious voyeurs that disinterested spectators. ***(Rule 119 Sec 21 ROC)***

h) Right of Confrontation

Right means the OPPORTUNITY to confront whoever it is whose testimony or evidence may lead the former to lose his liberty or even life. Thus, the right to cross-examine may be waived. ***(Gorospe Volume 2 p. 486)***

Purpose – Aside from discovery of the truth, the right of cross-examination also has the added purpose of allowing the judge to observe

the deportment of the witness on the stand and thereby assist him in forming his conclusions. ***(Gorospe Volume 2 p. 487)***

Principal exceptions to the right of confrontation:

1. Admissibility of dying declarations
2. ***2.*** Trial in absentia under Section 14(2) ***(Bernas p. 162)***
3. The right is available during trial which begins only upon arraignment (PI not included). ***(Dequito vs Arellano 81 Phil 128)***

The testimony of a witness who has not been submitted himself to cross-examination is not admissible in evidence. Affidavits of witnesses, who are not presented during trial and thus, are not subjected to cross, are inadmissible being hearsay. ***(People vs Quidato GR 117401)***

Lack of cross-examination due to the death of the witness does not necessarily render the deceased's previous testimony expungible. Where death prevents cross-examination under such circumstances that no responsibility of any sort can be ascribed to the plaintiff or the witness, it seems a harsh measure to strike out all that has obtained in the direct examination. (People vs Narca 275 SCRA 696)

Mere opportunity not actual cross is necessary. However in the case of ***People vs Seneris*** (99 SRA 92), it was held that the failure to complete the cross-examination was the fault neither of the defense nor of the prosecution; not of the defense, because he did proceed with the cross to the extent that there was time; not to the prosecution, because it was not the state's fault that the witness should die. In such a situation, the rule is that so much of the testimony as has already been covered by cross should be admissible in evidence.

☑**Take Note**: Rule 115 Section 1 of the ROC and Rule 130 Sec 47 of the ROC. Exceptions found in Sec 46 Rule 130 must be strictly construed because of the Bill of Rights provision. ***(Toledo Jr vs Judge Kapunan L-36603)***.

i) Compulsory Process

The right assures the accused an opportunity to compel the production of evidence and the attendance of witnesses on his behalf in order that he may be adequately equipped to present his side.

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 vs Galapon 237 SCRA 390)***

Subpoena ad testificandum – to compel a person to testify

Subpoena duces tecum – used to compel the production of books, records, things or documents therein specified.

Requisites for SDT to issue:

1. must appear prima facie relevant to the issue subject of the controversy
2. such books must be reasonably described by the parties to be readily identified ***(Roco vs Contreras GR 158275)***

Requisites for compelling the attendance of witnesses and the production of evidence:

1. evidence is really material
2. accused is not guilty of neglect in previously obtaining the production of such evidence
3. the evidence will be available at the time desired
4. no similar evidence may be obtained. ***(People vs Chua 356 SCRA 225)***

Webb vs De Leon

To start with, our Rules of Criminal Procedure do not expressly provide for discovery proceedings during the preliminary investigation stage of a criminal proceeding. Sections 10 and 11 of Rule 117 do provide an accused the right to move for a bill of particulars and for production or inspection of material evidence in possession of the prosecution. But these provisions apply AFTER the filing of the complaint or information in court and the rights are accorded to the accused to assist them to make an intelligent plea at arraignment and to prepare for trial.

THIS FAILURE to provide discovery procedure during PI does not, however, negate its use by a person under investigation when indispensable to protect his constitutional right to life, liberty and property. xxx Rule 112 installed a quasi-judicial type of preliminary investigation conducted by one whose high duty is to be fair and impartial. A PI should therefore be scrupulously conducted so that the constitutional right to liberty of a potential

accused can be protected. WE UPHOLD the legal basis of the right of petitioners to demand from their prosecutor xxx during their PI considering their exculpatory character, and hence, unquestionable materiality to the issue of their probable guilt. The right is rooted on the constitutional protection of due process which we rule to be operational even during PI of potential accused.

An accused is denied his right to have compulsory process if he is not provided the services of a qualified and competent interpreter to enable him to present his testimony. ***(People vs Cuizon 256 SCRA 325)***

A generalized assertion of executive privilege does not override a demonstrated specific need for evidence in a pending criminal trial. When the ground for asserting the privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial. US vs Nixon 4188 US 683

Polygraph evidence is not yet admissible even in the US. US vs Scheffer 523 US 303

j) Trials In Absentia

Purpose of the provision: To speed up the disposition of criminal cases. Nachura p. 210. Read Sec 6, Rule 120 of the Revised Rules on Criminal Procedure. 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. Gimenez vs Nazareno 160 SCRA 1

Even after the accused has waived for 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 vs People 183 SCRA 273

Presence of the accused is mandatory:

1. during arraignment and plea
2. during trial, for identification
3. during promulgation of sentence, unless for a light offense wherein the accused may appear by counsel or representative.

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 vs Mapalao 197 SCRA 79)***

Trial in absentia may only proceed only after an arraignment (DP), accused had been duly notified of the trial and his failure to appear is unjustified. ***(Gorospe Volume 2 p. 519)***

There can be no arraignment or plea in absentia. ***(Nolasco vs Enrile)***

17. WRIT OF HABEAS CORPUS

☞Read procedural provisions pertaining to the Writ of Habeas Corpus

Definition

It is an order by a competent court directing a person detaining another requiring the former to produce the body of the detainee at a designated time and place and show cause and explain the reason for such detention. It is the best and sufficient remedy by judicial decree, to secure the freedom of an illegally detained person.

It is regarded as a palladium of liberty, a prerogative writ which does not issue as a matter of right but in the sound discretion of the court or judge. ***(Caballes vs CA 452 SCRA 312)***

Objective

The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. ***(Tung Chin Hui vs Rodriguez 356 SCRA 31)***

When available

HC lies only where the restraint of a person's liberty has been judicially adjudged to be illegal or unlawful. ***(In Re 251 SCRA 709).***

The writ of HC shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the

rightful custody of any person is withheld from the person entitled thereto. ***(Sec 1 Rule 102 ROC***).

Thus, it may be invoked where there is
a) arbitrary detention, or
b) when a person was convicted by a court without jurisdiction (over the person or as to the cause)
c) or where continued imprisonment has become invalid or in excess of the allowable period.

Such a sentence is void only as to the excess imposed in case the parts arre separable, the rule being that the petitioner is not entitled to his discharge on a writ of HC unless he has served out so much of the sentence as was valid. ***(Gumabon vs Director of Prisons 37 SCRA 420)***

The mere loss or destruction of the records of a criminal case subsequent to the conviction of the accused will not render the conviction void such that release could be had by writ of HC. The proper remedy is to seek for reconstitution of the judicial records. ***(Feria vs CA 325 SCRA 525)***

Nevertheless, if due to the loss of the records of the cases, there was failure to file before civilian courts the corresponding charges against the prisoners who had been detained by virtue of their previous conviction by military commissions, then they should be released. ***(Ordonez vs Director of Prisons 235 SCRA 152)***

It is not physical restraint alone which is inquired into by the writ of HC. Reservation in the form of restrictions attached to the temporary release of a detainee constitutes restraint on his liberty and limit his freedom of movement of petitioner.

A release that renders a petition for a writ of HC moot and academic must be one which is free from involuntary restraints. Where a person continues to be unlawfully DENIED ***(Moncupa vs Enrile 141 SCRA 233)***

Where –

1. a person continues to be unlawfully denied one or more of his constitutional freedoms
2. where there is a present denial of due process

3. where the restraints are not merely involuntary but appear to be unnecessary, and
4. where a deprivation of freedom originally valid has, in the light of subsequent developments, become arbitrary
5. unlawful denial of bail.

the person concerned or those applying in his behalf may still avail themselves of the privilege of the writ.

Where the decision convicting the accused is already final, the appropriate remedy of the convict who invokes the retroactive application of the statute is to file a petition for HC, not an MR with modification of sentence. ***(People vs Labriaga 250 SCRA 163).***

Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and HC is the appropriate remedy to assail the legality of the detention. (***Gumabon vs Director of Prisons 37 SCRA 420)***

It is likewise available in regard to custody of children ***(David vs CA 250 SCRA 82)*** but not for the purpose of compelling a spouse to live with the other. ***(Ilusorio vs Bildner 332 SCRA 169)***

GR 190108 So vs Tacla

In general, the purpose of the writ of habeas corpus is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of habeas corpus, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. xxx The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.

The Rules on the Writs of Habeas Corpus and Amparo are clear; the act or omission or the threatened act or omission complained of -

confinement and custody for habeas corpus and violations of, or threat to violate, a person's life, liberty, and security for amparo cases - should be illegal or unlawful.
When not available

The general rule is that once the person detained is DULY CHARGED IN COURT, he may no longer question his detention by a petition for the issuance of a writ of HC – his remedy would be the quashal of the information or the warrant of arrest duly issued. ***(Bernarte vs CA 263 SCRA 323)***.

In this regard, the term "court" includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration. ***(Rodriguez vs Bonifacio 344 SCRA 519)***

The ruling in Moncupa vs Enrile that HC will lie where the deprivation of liberty which was initially valid has become arbitrary in view of subsequent developments finds no application in the present case because the hearing on petitioner's application for bail has yet to commence. A petition for HC is not the appropriate remedy for asserting one's right to bail. It cannot be availed of where the accused is entitled to bail not as a matter of right but on the discretion of the court and the latter has not abused such or HAS NOT even exercised the discretion. Remedy is to file for bail and to allow hearings thereon.

The fact that the PI was invalid and that the offense had already prescribed do not constitute valid grounds for the issuance of a writ of HC. 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 vs Sandiganbayan 193 SCRA 464)***

In EXCEPTIONAL CIRCUMSTANCES, HC, may be granted by the courts even when the person concerned is detained pursuant to a valid arrest or his voluntary surrender. ***(Serapio vs Sandiganbayan 396 SCRA 487)***

Vis-à-vis Certiorari

While ordinarily, the writ of HC will not be granted when there is an adequate remedy by writ of error or appeal or by writ of certiorari, it may, nevertheless, be available in exceptional cases, for the writ should not be considered subservient to procedural limitations which glorify form over substance. It must be kept in mind that although the questions most often

considered in both HC and certiorari is whether an inferior court has exceeded its jurisdiction, the former involves a collateral attack on the judgment and "reaches the body but not the record", while the latter assails directly the judgment and "reaches the record but not the body".

Who may grant the writ

Sec 2 Rule 102 ROC. As provided in BP 129, a judge of the MTC may issue the writ if all the judges of the RTC in the city or province are not present.

Necessity of hearing

A court may grant the writ if it appears upon the petition that the writ of HC ought to be issued – no hearing is required before the writ may be issued. ***(Tan vs Adre 450 SCRA 145)***

To whom addressed

Officer under whom another is in detention or in alleged illegal custody. In one case, however, the Court said that the judge who issued the order and warrant for such person's arrest, thus with constructive custody, might be made respondent. ***(Calvan vs CA 341 SCRA 806)***

Contempt

There is a need to comply with the writ; disobedience thereof constitutes contempt of court. ***(Contado vs Tan 160 SCRA 404)***

Suspension of the Privilege of the Writ

In cases of **invasion OR rebellion WHEN public safety requires it.**

Effect of suspension:

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 released within three days, otherwise he shall be released***. (Art. VII, Sec. 18, 5th and 6th pars., 1987 Constitution)***

Congressional participation

Within 48 hours from the suspension of the writ of habeas corpus the President shall submit a reporting 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 suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
The Congress, if not in session, shall, within 24 hours following such suspension convene in accordance with its rules without need of a call. ***(Art. VII, Sec. 18, 1st and 2nd pars., 1987 Constitution)***

Supreme Court review of suspension

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. ***(Art. VII, Sec. 18, 3rd par., 1987 Constitution)***

What is suspended is merely the right of the individual to seek release from detention through the writ of HC as a speedy means of obtaining his liberty. ***(Aberca vs Ver 160 SCRA 590).*** The suspension is supposed to enable the Government to deal more effectively with the rebellion or invasion that might be afoot. Note however the JUDICIALLY CHARGED provision and the RIGHT TO BAIL provision.

a) Writ of Amparo

☞Read A.M. No. 07-9-12-SC - THE RULE ON THE WRIT OF AMPARO

The amparo production order may be likened to the production of documents or things under Section 1, Rule 27 of the Rules of Civil Procedure and should not be confused with a search warrant for law enforcement under Article III, Section 2 of the 1987 Constitution. ***(Secretary of National Defense vs Manalo GR 180906)***

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. The writ shall issue if the Court is preliminary satisfied with the prima facie existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed. ***(Canlas vs Naapico 554 SCRA 208)***

As the Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances", its coverage, in its present form, is confined to these two instances or to threats thereof.

Extralegal killings – Killings committed without due process of law ie without legal safeguards or judicial proceedings.

Enforced disappearances – Attended by the following characteristics: an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of the law.

Evolution of the writ

1. **amparo libertad** for the protection of personal freedom, equivalent to the HC writ
2. **amparo contra leyes** for the judicial review of the constitutionality of statutes
3. **amparo casacion** for the judicial review of the constitutionality and legality of a judicial decision
4. **amparo administrativo** for the judicial review of administrative actions
5. **amparo agrario** for the protection of peasant's rights derived from the agrarian reform process

The writ of amparo serves both PREVENTIVE and CURATIVE roles in addressing the problem of extralegal killings and enforced disappearances. It is PREVENTIVE in that it breaks the expectation of impunity in the commission of these offenses.; it is CURATIVE in that it facilitates the

subsequent investigation and action. ***(Sec of Natl Defense vs Manalo 568 SCRA 1)***

Permutations of the right to security of person

1. The right to security of person is freedom from fear.
2. The right of security is a guarantee of bodily and psychological integrity or security
3. The right to security of a person is a guarantee of protection of one's rights by the government. ***(Secretary of National Defense vs Manalo GR 180906)***

In an Amparo proceeding re the case of ***Melissa Roxas: G.R. No. 189155*** , the doctrines were as follows:

As to the doctrine of Command Responsibility

It must be stated at the outset that the use by the petitioner of the doctrine of command responsibility as the justification in impleading the public respondents in her amparo petition, is legally inaccurate, if not incorrect. The doctrine of command responsibility is a rule of substantive law that establishes liability and, by this account, cannot be a proper legal basis to implead a party-respondent in an amparo petition. (She would like to implicate high-ranking officials in this petition)

Command responsibility is "an omission mode of individual criminal liability," whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators.

SC said:

While the principal objective of its proceedings is the initial determination of whether an enforced disappearance, extralegal killing or threats thereof had transpired—the writ does not, by so doing, fix liability for such disappearance, killing or threats, whether that may be criminal, civil or administrative under the applicable substantive law.

The Secretary of National Defense v. Manalo

The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt

requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.

It must be clarified, however, that the inapplicability of the doctrine of command responsibility in an amparo proceeding does not, by any measure, preclude impleading military or police commanders on the ground that the complained acts in the petition were committed with their direct or indirect acquiescence. In which case, commanders may be impleaded—not actually on the basis of command responsibility—but rather on the ground of their responsibility, or at least accountability.

Razon v. Tagitis

Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts.

Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance.

DEGREE OF PROOF NEEDED – Substantial Evidence.

Direct evidence of identity, when obtainable, must be preferred over mere circumstantial evidence based on patterns and similarity, because the former indubitably offers greater certainty as to the true identity and affiliation of the perpetrators.

Re: Her prayer for Return of personal Belongings: It was denied because of the following reasons:

1) An order directing the public respondents to return the personal belongings of the petitioner is already equivalent to a conclusive pronouncement of liability. The order itself is a substantial relief that can only be granted once the liability of the public respondents has been fixed in a full

and exhaustive proceeding. As already discussed above, matters of liability are not determinable in a mere summary amparo proceeding

2) Section 1 of the Amparo Rule, which defines the scope and extent of the writ, clearly excludes the protection of property rights.

Re: Inspection orders under the remedy

An inspection order is an interim relief designed to give support or strengthen the claim of a petitioner in an amparo petition, in order to aid the court before making a decision.A basic requirement before an amparo court may grant an inspection order is that the place to be inspected is reasonably determinable from the allegations of the party seeking the order. While the Amparo Rule does not require that the place to be inspected be identified with clarity and precision, it is, nevertheless, a minimum for the issuance of an inspection order that the supporting allegations of a party be sufficient in itself, so as to make a prima facie case

Yano vs Sanchez GR 186640

The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence. The omission or inaction on the part of the public official provides, however, some basis for the petitioner to move and for the court to grant certain interim reliefs. Eg. TPO, IO, PO. These provisional reliefs are intended to assist the court *before* it arrives at a judicious determination of the *amparo* petition. For the appellate court to, in the present case, still order the inspection of the military camps and order the army units to conduct an investigation into the disappearance of Nicolas and Heherson *after* it absolved petitioners is thus not in order. The reliefs granted by the appellate court to respondents are not in sync with a finding that petitioners could not be held accountable for the disappearance of the victims.

*****La lang -** It would be grave error to grant the relief prayed for without violating the well-settled rule that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal. The rule is clear that no modification of judgment could be granted to a party who did not appeal.

To start off with the basics, the writ of amparo was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds. Consequently, the Rule on the Writ of Amparo – in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact***,(Castillo vs Cruz GR 182165)***

☑**Take Note**:

Section 22. Effect of Filing of a Criminal Action. – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

Right to Life, Liberty and Security defined: ***(Fr Reyes vs Gonzalez GR 182161)***

In ***Secretary of National Defense et al. v. Manalo et al***., the Court explained the concept of right to life in this wise:

While the right to life under Article III, Section 1 guarantees essentially the right to be alive- upon which the enjoyment of all other rights is preconditioned - the right to security of person is a guarantee of the secure quality of this life, viz: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property… pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual."

The right to liberty, on the other hand, was defined in the ***City of Manila, et al. v. Hon. Laguio, Jr***.,in this manner:

Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." x x x

Secretary of National Defense et al. v. Manalo et al thoroughly expounded on the import of the right to security, thus:

A closer look at the right to security of person would yield various permutations of the exercise of this right.

First, the right to security of person is "freedom from fear." In its "whereas" clauses, the Universal Declaration of Human Rights (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people." (*emphasis supplied*) Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. It is the "right to security of person" as the word "security" itself means "freedom from fear." Article 3 of the UDHR provides, *viz*:

Everyone has the right to life, liberty and security of person. Thus, in the *amparo* context, it is more correct to say that the "right to security" is actually the "freedom from threat." Viewed in this light, the "threatened with violation" Clause in the latter part of Section 1 of the *Amparo* Rule is a form of violation of the right to security mentioned in the earlier part of the provision. Second, the right to security of person is a guarantee of bodily and psychological integrity or security. Third, the right to security of person is a guarantee of protection of one’s rights by the government.

The writ of amparo should not issue when applied for as a substitute for the appeal or certiorari process, or when it will ordinately interfere with these processes. ***(Tapuz vs del Rosario 554 SCRA 768)***

18. SELF-INCRIMINATION CLAUSE

It prescribes an option of refusal to answer the incriminating questions and not a prohibition of inquiry. ***(People vs Ayson 175 SCRA 216)***

a) Scope and Coverage

In determining the circumstances in which the privilege may be invoked, one would have to take into account the NATURE of the evidence, the PERSONALITY of the person invoking it, and the PROCEEDING involved.

The right is available not only in criminal proceedings, but also in all other government proceedings, including civil actions and administrative or legislative investigations.

May be claimed not only by the accused but also by the witness to whom an incriminating question is addressed.

It applies only to testimonial compulsion and production of documents, papers and chattels in court except when books of account are to be examined in the exercise of PP and the power of taxation. An accused MAY BE COMPELLED to be photographed or measured, his garments may be removed, and his body may be examined. ***(p 389 Duka)***

The privilege is basically directed at testimonial evidence or any evidence COMMUNICATIVE in nature acquired from the accused under duress. Thus, it would not be implicated if it is physical evidence that is sought to be taken from a person or otherwise sought to be produced, except when these are personal papers (inclusion of his “body” in evidence is not prohibited i.e. hair, DNA, substance, paraffin test)

It is available to one who might be guilty or one who simply professes innocence

Does not extend to private investigations done by private individuals (***BPI vs Casa 430 SCRA 261.)***

It is available to him in a preliminary investigation before the public prosecutor’s office.

The right has no application to juridical persons. Reason is that corporations are mere creatures of the State

In US vs Wade, the court held that compelling the suspect to speak within hearing distance from the witnesses is not violative of this provision. It was not compulsion to utter statements of a testimonial nature; he was required to use his voice as an identifying PHYSICAL CHARACTERISTIC, not to speak his guilt.

The privilege has consistently been held to extend to all proceedings sanctioned by law and to all cases in which punishment is sought to be visited upon the witness, whether a party or not. p. 389 Duka It is not the character of the suit but the NATURE OF THE PROCEEDINGS that controls. ***(Rosete vs Lim GR 136051)***

General Rule – Only an accused in a criminal case can refuse to take the witness stand. The right to refuse to take the stand does not generally apply to parties in admin cases or proceedings

Exception –

a) In admin cases/ proceedings that partook of the nature of a criminal proceeding or analogous to a criminal proceeding. Eg one resulting in loss of license, profession, employment, or forfeiture of property.

b) It is likewise the opinion of the court that said esception applies to parties in civil actions which are criminal in nature. Rosete vs Lim GR 136051

Right of defendant in a criminal case

He can altogether refuse to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him. ***(p. 397 Duka)***

Right of a party in a civil/admin case or legislative investigations

He may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him. ***(p. 388 Duka)***

1) Foreign Laws

In ***US vs Balsys***, it was held that the privilege against self-incrimination may not be invoked even if faced with possibility of incrimination in regard to criminal laws of other countries and not within the jurisdiction of the State in which the proceedings are held.In this case, Balsys was invoking the right against self-incrimination when asked about his wartime activities during the 1st World War during an investigation conducted by the Office of Special Investigations of the Criminal Division of the US DOJ regarding the correctness of the information contained in his immigrant VISA saying that his answers might subject him to criminal prosecution in Lithuania, Israel and Germany.

b) Application

The right may be waived, expressly, or impliedly, as by failure to claim it at the appropriate time. ***(Duka p. 396)***

Thus, if he wish to testify, he has such right. But if he does testify, then he may be cross-examined as to any matters stated in his direct or connected therewith. He may not on cross refuse to answer any question on the ground that the answer that he will give, or the evidence he will produce, would have a tendency to incriminate him for the crime with which he is charged. IT MUST HOWEVER be made clear that if the defendant in a CRIM action be asked a question which might incriminate him, not for the crime with which he is charged, BUT FOR SOME OTHER CRIME, distinct from that of which he is accused, he may invoke the right against self-incrimination. ***(People vs Ayson GR 85215)***

A person cannot be compelled to produce a sample of his handwriting as it is not a purely mechanical act , but requires the application of intelligence and attention. ***(Beltran vs Samson GR 32025.)***

See ☞Bar Exam Q and A in page 401 of Duka.

Effect of violation –

Section 12(3), Article III, Bill of Rights. This exclusionary rule applies not only to confessions but also to admissions, whether made by a witness in any proceeding or by an accused in a criminal procceding or any person under investigation for the commission of an offense. ***(Galman vs Pamaran 138 SCRA 294)***

c) Immunity Statutes

This is one of the exceptions to the right of an accused not to take the witness stand – when he is covered by an immunity statute, in which case he may not refuse to answer incriminatory questions. This applies as well to any other person whose possibly incriminating testimony is required to be disclosed by applicable immunity statutes.

1). **Transactional Immunity Statutes –** Grants immunity to the witness from prosecution for an offense to which his compelled testimony relates.

2). **Use immunity –** Prohibits use of witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness. ***(Duka p. 395)***

The Constitutional provision does not impose on the judge, or other officer presiding over the trial, hearing or investigation any affirmative obligation to advise the witness of his right against self-I. *Ignorantia Legis Non Excusat*.

19. INVOLUNTARY SERVITUDE AND POLITICAL PRISONERS

For as long as those ideas are simply matters of the mind, or expressed in accordance with lawful avenues, those holding them should not suffer any political persecution or imprisonment simply because they think differently or not in conformity with the prevailing views. (Just like in freedom of religion). If those ideas and aspirations get to be expressed through unlawful means, however, then that is the time when the authorities may apply the law and put their adherents behind bar, not because of what they believe in but because of what they have done.

Involuntary servitude denotes a condition of enforced, compulsory service of one to another. Rubi vs Provincial Board of Mindoro 39 Phil 660 or the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. ***(Aclaracion vs Gatmaitan GR L-39115)***

Exceptions to involuntary servitude

1. When found guilty of a crime for which they may rightfully be compelled to do things in accordance with their punishment
2. Art III, Sec 18(2)
3. Article II, Section 4
4. Posse comitatus, where able-bodied men may be called upon to contribute their share in services for the maintenance of peace and order in their own community. ***(US vs Pompeya 31 Phil 245)***
5. Return to Work Order pursuant to an order of the Labor Secretary. Workers are not really forced to work against their will as they have the option to defy but facing the consequences.
6. In ***Robertson vs Baldwin*** (165 US 275), it was held that seamen may be compelled to continue with the service they contracted for, even against their will. They cannot simply abandon ship, especially in foreign ports.
7. Naval enlistment
8. Patria potestas or parental authority which is the juridical institution whereby the parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. ***(Duka p. 405-406, 411-412)***

20. EXCESSIVE FINES AND CRUEL AND INHUMAN PUNISHMENTS

The constitutional provision on fines and punishments addresses itself to the form, extent and duration of punishment that reasonably may be meted out on anyone found guilty of committing an offense against the State.

In ***People vs Estoesta*** (93 Phil 647), it was held that it takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. The punishment must be flagrantly and plainly oppressive, wholly disproportionate to the nature of the offenseas to shock the moral sense of the community.

The Constitutional proscription against the imposition of excessive fines applies only to criminal prosecutions. ***(Serrano vs NLRC 331 SCRA 331)***

Punishment is CDI if it involves torture or lingering death. It implies something inhuman and barbarous, something more than the mere extinguishment of life. A fine is excessive when under the circumstances, it is disproportionate to the offense ***(Bernas p. 178)***

The following may be used as guides for determining whether a punishment is cruel and unusual:

1. A punishment must not be so severe as to be degrading to the dignity of human beings
2. It must not be applied arbitrarily
3. It must not be unacceptable to contemporary society
4. It must not be excessive ***(Furman vs Georgia 408 US 238)***

People vs Echegaray

The constitutional exercise of the Congress' limited power to re-impose the death penalty entails the following:

1. That Congress define or describe what is meant by heinous crimes
2. That Congress specify and penalize by death, only crimes that qualify as heinous in accordance with the definition or description set in the death penalty bill and/or designate crimes punishable by RP to death in which latter case, death can only be imposed upon the attendance of circumstances duly proven in court that characterize the crime to be heinous in accordance with the definition or description set in the death penalty bill;
3. That Congress, in enacting this death penalty bill be singularly motivated by compelling reasons involving heinous crimes.

In ***Roper vs Simmons***, it was held that the US Constitution forbids the imposition of death penalty on offenders who were under the age of 18 when their crimes were committed – i.e that the death penalty is disproportionate punishment for offenders under 18. So is the application to mentally retardates. ***(Atkins vs Virginia 536 US 304)***

Imprisonment is the detention of another against the his will depriving him of his power of locomotion and it is something more than mere loss of freedom. It includes the notion of restraint within the limits defined by wall or any exterior barrier. ***(People vs Jalosjos 324 SCRA 689).***

A prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime. There is no iron curtain drawn between the Constitution and the prisons of this country, e.g. they are entitled to equal protection and due process as well as access to the courts ***(Cruz vs Beto 405 US 319)***

Prison disciplinary proceedings are not part of criminal prosecution, and the full panoply of rights due a defendant in such proceeding does not apply. Eg the right to confront and cross examination does not apply or counsel. ***(Wolff vs Mcdonell 418 US 539)***

A lesser standard of review than strict scrutiny is appropriate in determining the constitutionality of prison rules. ***(Turner vs Faffley 482 US 78)***

21. NON-IMPRISONMENT FOR DEBTS

No person may be imprisoned for debt in virtue of an order in a civil proceeding, either as a substitute for satisfaction of a debt or as a means of compelling satisfaction; but a person may be imprisoned as a penalty for a crime arising from a contractual debt and imposed in a proper criminal proceeding. ***(Bernas p. 179)***

Fraudulent debt

A person may be imprisoned for such only if

a) the fraudulent debt constitutes a crime

b) the debtor has been duly convicted ***(Bernas p. 179)***

The conversion of the monetary indemnity, imposed as part of a criminal penalty, into subsidiary imprisonment does not violate the prohibition of imprisonment of debt since the obligation to indemnify was not ex contractu but ex delicto. ***(Alejo vs Judge Inserto AM 1098)***

Poll tax – Cedula tax or residence tax.

The Constitution does not prohibit the cedula tax but it prohibits imprisonment for non-payment of the cedula or residence tax. ***(Bernas p. 180)***

The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. Hence, it does not violate this provision. ***(Lozano vs Martinez 146 SCRA 323)***

22. DOUBLE JEOPARDY

a) Requisites – Discussions herein were taken from book of Bernas which I believe contains the most exhaustive and significant discussions about the subject.

Requisites for valid defense of DJ

A) 1st jeopardy must have attached prior to the 2nd
B) 1st jeopardy must have terminated
C) the 2nd jeopardy must be for the same offense as that in the 1st

Elements of (A)/Jeopardy of punishment attaches:

1. upon a good indictment
2. before a competent court
3. after arraignment
4. after plea

Presentation of evidence contrary to plea and to withdrawal of original plea such that (4) is not present (as in effect there is no valid plea) and hence, 1st jeopardy did not attach.

Defective complaint, resulting to quashal did not place the accused in 1st jeopardy

When is 1st jeopardy terminated/when does (B) takes place?

1. by acquittal
2. final conviction
3. dismissal without express consent of the accused
4. dismissal on the merits – includes dismissal by virtue of the right to speedy trial

General Rule: The dismissal or termination of the case after arraignment and plea to valid information shall be a bar. (There is valid defense of DJ)

Exception: 1) Dismissal is made upon motion or the express consent of the defendant

2) Dismissal not an acquittal or based upon consideration of the evidence or of the merits of the case

3) Question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to court of origin for further proceedings.

☑**Take Note**: When the dismissal of the case clearly constitutes grave abuse of discretion amounting to lack of jurisdiction, the dismissal, even if made on the merits, is invalid and is therefore no bar to the reinstatement of the case.

Test to determine if (C) is present

1. whether one offense is identical with the other
2. or whether it is an attempt or frustration of the other
3. or whether one offense necessarily includes or is necessarily included in the other offense charged in the former complaint or information

Offenses need not be the same PROV that they flow from the same act. it will be different however if the act violated 2 different statutes. There is no DJ in one against the other.

General Rule: If acquitted, appeal of the Government may not be had
Exception: If acquittal were characterized with grave abuse of discretion ie prosecution was not given due process.

b) MR and Appeals

Judgment of CONVICTION

Appeal

A judgment of conviction could ONLY be reconsidered or appealed at the initiative of the accused. When the accused decides to simply serve his sentence or pay his fine that is the end of the case. The prosecution may not move for recon or appeal the judgment as the same would place the accused in DJ. The prosecution could also not appeal for the purpose of increasing the penalty. ***(People vs Leones 366 SCRA 535)***

However when the accused himself appeals, he stands the chance of having his penalty increased since an appeal in a criminal case throws open the whole case for review, including the penalty imposed. ***(People vs Rondero 320 SCRA 383)***

MR

In case of MR, it was held that when the accused files or consents to the filing of the MR or modification, double jeopardy cannot be invoked because the accused waived his right not to be placed therein by filing such

motion. His motion gives the court an opportunity to rectify his errors or to reevaluate its assessment of facts and conclusions of law and make them conformable with the statute applicable to the case in the new judgment it has to render. In effect, an MR or modification filed by or with the consent of the accused renders the entire evidence open for the review of the trial court without, however, conducting further proceedings such as the taking of additional proof. ***(People vs Astudillo 410 SCRA 723)***

Judgment of ACQUITTAL

The accused can not anymore be imperiled by the prosecutor either seeking a recon or appeal from it. If there was a grave abuse of discretion, that would be a different story. Without jurisdiction, the court cannot proceed to render a valid judgment. Thus the prosecution may elevate the matter to an appellate court by means of certiorari. ***(Yuchengco vs CA 376 SCRA 531)***

c) Dismissal with Consent of the Accused

When the case is dismissed with the express consent of the defendant, the dismissal will not be a bar to another prosecution for the same offense; because, his action in having the case dismissed constitutes a waiver of his constitutional right or privilege, for the reason that he thereby prevents the court from proceeding to the trial on the merits and rendering a judgment of conviction against him. ***(People vs Salico)***

The application of the sister doctrines of waiver and estoppel requires two sine qua non conditions:

first, the dismissal must be sought or induced by the defendant personally or through his counsel.

Second, dismissal must not be on the merits and must not necessarily amount to an acquittal. ***(People vs Obsania 23 SCRA 1249)***

General Rule: The termination of the case other than on acquittal or conviction of the accused, which dismissal is brought about by the accused himself is not bar to further prosecution

Exception:

a) **Demurrer to Evidence** – D to E being favorably acted upon, the acquittal results from the fact that the prosecution has not really presented that amount of evidence sufficient to overcome the presumption of

innocence. Where the prosecution evidence could not sustain a conviction, there is no point in still requiring the accused to present his evidence.

b**)** **Right to Speedy Trial** – In effect, the State has failed to prove its case within a reasonable period of time.

*** In the case of ***Dela Rosa vs CA*** the Court set forth the requisites that must occur for legal jeopardy to attach which are:

1. valid complaint or infor
2. court of competent jurisdiction
3. accused has pleaded to the charge
4. The accused has been convicted or acquitted OR the case dismissed or terminated without the express consent of the accused.

23. EX POST FACTO LAWS AND BILL OF ATTAINDER

EPF Laws - It is a law which penalizes a person for having committed an act which was not punishable at the time of its commission. Such retroactive application violates a person's right to due process.

Kinds of EPF Laws

An ex post facto law is one that:

1) Makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;

2) Aggravates a crime, or makes it greater than it was, when committed;

3) Changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

4) Alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;

5) Assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

6) Deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty. ***(In re Kay Villegas Kami, 35 SCRA 429)***

Characteristics of EPF laws

To be EPF the law must:

1. must refer to criminal matters (penal)
2. be retroactive in its application
3. to the prejudice of the accused. ***(Cruz p. 268)***

As to requirement No 1

Penal law is one that prescribes a criminal penalty imposable in a criminal trial. A law is also penal if it prescribes a burden equivalent to a criminal penalty (e.g. disqualification from the practice of a profession) even if such burden is imposed in an administrative proceeding. ***(Pascual v. Board of Medical Examiners, 28 SCRA 344).***

However, a law on criminal procedure which alters the legal rules of evidence or mode of trial can be an EPF law unless the changes operate only in a limited and unsubstantial manner to the disadvantage of the accused. ***(Beazell vs Ohio 269 US 167)***

Bill of Attainder - It is a law that inflicts punishment without a trial, substituting the legislative act for a judicial determination of guilt. It violates the right s of the accused to be presumed innocent and to seek a proper remedy before a court of law.

If a statute is a bill of attainder, it is an EPF law. But if it is not an ex post facto law, the reasons that establish that it is not are PERSUASIVE that it cannot be a bill of attainder. ***(Cruz. P. 271)***

Essential elements of a BOA

1. There must be a law
2. The law imposes a penal burden (same sense as “penal” in EPF law; (pls see previous discussion)on named individual or easily ascertainable members of a group
3. The penal burden is imposed directly by the law WITHOUT judicial trial