



## COLLEGE OF LAW

### IMPEACHMENT PRIMER AND FREQUENTLY ASKED QUESTIONS\*

#### Frequently Asked Questions

##### A. Overview

###### 1. What is impeachment? What is the purpose of impeachment?

Impeachment refers to the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution. [Corona v. Senate, G.R. No. 200242 (2012)]. It is “a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office.” [Republic v. Sereno, G.R. No. 237428 (2018)].

An impeachment proceeding is *sui generis*, “a class of its own.” It is neither civil nor criminal in character. Unlike traditional legal proceedings, impeachment is quintessentially political, with facts and law being weighed not by specially trained judges but by popularly elected members of Congress.

###### 2. Which officials may be impeached?

Under Article XI, Section 2 of the 1987 Constitution, the following are impeachable officers:

1. The President
2. The Vice-President
3. Members of the Supreme Court
4. Members of the Constitutional Commissions, i.e., Civil Service Commission, Commission on Audit, and Commission on Elections
5. The Ombudsman

This is an exclusive enumeration as all other public officers and employees may be removed from office as provided by law, but not by impeachment. [Const. art. XI, § 2].

###### 3. What are the grounds for impeachment?

The following are grounds for impeachment:

1. Culpable violation of the Constitution
2. Treason
3. Bribery
4. Graft and corruption
5. Other high crimes, or
6. Betrayal of public trust [Const. art. XI, § 2].

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Because of the rarity and political character of impeachment, we do not have guidance from courts on the conclusive meaning of these grounds. But based on the text of the Constitution alone, to be impeachable, the violation of the Constitution must be “culpable,” *i.e.*, of a character worthy of punishment.

Treason, bribery, and graft and corruption are currently defined by various laws, such as the Revised Penal Code and Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. However, these statutes are separate from the Constitution, and how Congress has defined these acts in the past does not need to bind the current or a future congress’s understanding of these grounds.

High crimes are understood in American law as acts that are of a “sufficient seriousness as to justify the belief that there was a grave violation of the trust imposed on the official sought to be impeached,” [Rec. Const. Comm’n No. 040 (July 26, 1986)] even if they may not necessarily be chargeable in a court. Finally, betrayal of public trust was intended to be a catch-all and reflects the relaxation of the grounds for impeachment as a measure against its over-legalization. [*See id.*]

#### **4. What is the difference between impeachment and a criminal case?**

An impeachment proceeding is *sui generis*, *i.e.*, “of its own kind” or in a class of its own. Its sole function is to remove an impeachable officer and disqualify her from further officeholding. It is quintessentially political, and it is neither civil, criminal, nor administrative in nature. It is only preparatory to liability as no legally actionable liability attaches to the public officer by a mere judgment of impeachment against her. [*In re: Letter of Mrs. Corona*, A.M. No. 20-07-10-SC (2021)]. A conviction in impeachment does not result in imprisonment as in a criminal conviction. [*See Const. art. IX, § 3(7)*]

Unlike in criminal proceedings, proof beyond reasonable doubt is not required for conviction in impeachment. Past Senates have also declined to refer to a judicial standard of proof, *e.g.*, substantial evidence. This flows from the fact that impeachment is “not the means intended to redress and punish offenses against the state, but rather a mere political safeguard designed to preserve the state and its system of laws from internal harm.” [*In re: Letter of Mrs. Corona*, *supra*].

Even if impeachment is political in character, non-compliance with requirements in the Constitutional text (*e.g.*, voting thresholds) may be subject to review by the proper court.

#### **5. What are the two stages of impeachment?**

Impeachment consists of two stages: (1) Initiation, and (2) Trial.

The House of Representatives has the exclusive power to initiate all cases of impeachment. [Const. art. XI, § 3(1)] This process ends with the approval by at least one-third (1/3) of all the Members of the House of Representatives of the Articles of Impeachment.

The Articles are then transmitted to the Senate, which has the sole power to try and decide all cases of impeachment. [Const. art. XI, § 3(6)]

#### **B. Initiation**

#### **6. What are the three ways to initiate an impeachment case?**

An impeachment starts with the filing of a verified complaint (*i.e.*, made under oath and under pain of perjury), by any of the following:

- (a) A Member of the House of Representatives;
- (b) A citizen upon the endorsement by any Member of the House of Representatives; or
- (c) Via a verified complaint or resolution of impeachment, filed by at least one-third (1/3) of all Members of the House. [Const. art. XI, § 3(2)]

## 7. How many impeachment cases can be filed against an official?

"No impeachment proceedings shall be initiated against the same official more than once within a period of one year." [Const. art. IX, § 3(5)] For the purpose of this rule, the impeachment proceeding is initiated when a verified complaint is filed and referred to the Committee on Justice for action. To "initiate" refers to the [a] filing of the impeachment complaint coupled with [b] Congress' taking final action of said complaint. [Francisco v. House of Representatives, G.R. No. 160261 (2003)].

Following past congressional practice, multiple impeachment complaints may be simultaneously referred to the Committee on Justice. This would count only as one initiation. [See Gutierrez v. House of Representatives Committee on Justice, G.R. No. 193459 (2011)]

## 8. Does the House of Representatives need to conduct hearings before initiating an impeachment case?

Generally, the House of Representatives is not obligated to conduct hearings until certain conditions are met. First, the Committee on Justice must first find the complaint sufficient in form and in substance. If the answer is in the affirmative, it shall give notice to the respondents and allow them to file their Answer, affidavits, and other pleadings. Upon the receipt of all the pleadings, the Committee shall decide if sufficient grounds for impeachment exist. If there are sufficient grounds, only then will the Committee conduct a hearing [Rules of Procedure in Impeachment Proceedings (hereinafter "House Rules"), rule III, 19th Cong., 1st Sess. (2022)].

However, if the House of Representatives initiates impeachment by direct resolution of at least one-third (1/3) of all its Members, then the House of Representatives will no longer conduct said committee hearings. The Articles of Impeachment in such resolution are transmittable to the Senate, which must try the case "forthwith." [Const. art. XI, § 3(5)]

## 9. What are the "Articles of Impeachment?"

The Articles of Impeachment contain the grounds upon which the impeachable officer may be convicted, and consequently removed from office, after the trial held at the Senate. They are prepared by the House of Representatives after the conduct of hearings in the Committee on Justice [House Rules, rule III, § 9], or are equivalent to the verified complaint/resolution of at least one-third (1/3) of all the Members of the House [House Rules, rule IV, § 14].

## 10. What happens if the official is "impeached?" How is different from "convicted?"

Formally, if an official is "impeached," Congress has found sufficient grounds to charge her so that she may be tried in the Senate.

Meanwhile, an impeached official is "convicted" (or acquitted) if at least two-thirds (2/3) of all the Members of the Senate find her guilty (or not guilty) of the charges filed by the House of Representatives. Once convicted, the respondent is removed from public office and the Senate has the discretion to impose the additional penalty of permanent disqualification from holding any and all further public office [*In re: Letter of Mrs. Corona, supra*].

**C. Trial****11. What happens in an impeachment trial?**

In an impeachment trial, the Senate tries the impeached officer under the Articles of Impeachment transmitted to it by the House of Representatives.

Briefly and pursuant to the current Senate Rules of Procedure on Impeachment Trials [S. Res. 39, 19th Cong., 1st Sess. (2023) [hereinafter “Senate Rules”]], senators are first sworn to “political neutrality,” *i.e.*, to exercise their duty without unfair discrimination and regardless of party affiliation or preference. [Senate Rules, rule III]

The impeached official is then called to answer (or plead) to each charge in the Articles of Impeachment. She may appear in person or send a representative or counsel to plead for her, unlike in a criminal case. If she refuses to appear or plead, the Senate will continue with trial as if she pleaded “not guilty.” [Senate Rules, rules VII & IX]

The Senate then hears arguments and witnesses from both the prosecution and the defense. Unlike in court proceedings where a judge asks questions sparingly, Senators may in practice ask extensively not just a witness but also counsel for either side. There is no requirement for the impeached official to appear as a witness for himself. After closing arguments, trial is concluded and the Senate votes. At least two-thirds (2/3) of all the Members of the Senate must vote for conviction on any of the Articles of Impeachment for the impeached official to be convicted.

**12. Who serve as counsel in the impeachment trial?**

As the House of Representatives is the body that accuses the impeached official, it is represented by a panel of prosecutors who are selected from the House’s own Members. They may be assisted by private lawyers, who can also examine witnesses but who are always under the direct control and supervision of the panel of prosecutors (or “managers” in American law).

The impeached official shall be represented by her own counsel. [See Senate Rules, rule XIII]

**13. Does the impeached official continue to hold public office during the Senate trial?**

Yes. Pending the decision of the Senate on the impeachment complaint, the official impeached by the House of Representatives will continue to hold and exercise the functions of her office. The Constitution does not provide for a preventive suspension, unlike what statutes provide in other administrative cases.

**14. How long does an impeachment trial last?**

There is no fixed time for an impeachment trial. In the past, trial ranged from around one (1) month during the Estrada impeachment trial (2000-2001), and five (5) months during the Corona impeachment trial (2012). Notably, the Estrada impeachment was pre-terminated after EDSA II, when the Senate adjourned without voting after President Estrada resigned.

**15. Must the Senate conduct trial in public (*e.g.*, televised or livestreamed)?**

Yes. While the Senate is sitting upon an impeachment trial, its doors shall remain open to the public. [Senate Rules, rule XVIII] Historically, every impeachment trial has been televised and covered extensively by the media due to the exceptional character of the proceeding.

**16. Does the Senate have to hear all charges first before voting? Does the Senate have to vote on all charges at the same time?**

Under the rules of the 19th Congress, “trial of all the articles of impeachment shall be completed before the Senators vote on the final question on whether or not the impeachment is sustained.” [Senate Rules, rule XXI]

After trial is finished, each Article is voted upon by the Members of the Senate separately. To result in conviction, it is enough that at least two-thirds (2/3) of all the Members of the Senate vote guilty on one Article. However, if not a single Article received the required number of votes, the impeached official is acquitted.

Note that this rule is similar to the Senate Rules during the 15th Congress and the Corona impeachment trial (2012). In that case, the House Prosecution dropped five (5) of the eight (8) Articles of Impeachment, allowing the Senate to terminate trial early and vote only on three (3) charges.

**17. What happens if the official is convicted?**

Judgment consists of (a) removal and (b) disqualification to hold any office in government. [Const. art. XI, § 3(7)]. An impeachment conviction cannot be pardoned. [Const. art. VII, § 19]

Previously, there has been debate on whether the Senate can impose a lower penalty than removal. The records of the Constitutional Commission suggest that no penalty other than removal and disqualification was contemplated. [See Rec. Const. Comm'n No. 40 (July 26, 1986); No. 41 (July 28, 1986)]

In any event, the impeached official can be held criminally and/or civilly liable after her removal by filing the proper charges with the courts of law. Prosecution after impeachment does not constitute prohibited double jeopardy. [*In re: Letter of Mrs. Corona, supra*]

**18. What happens if the official is acquitted?**

The acquittal of the official does not bar the initiation of subsequent impeachment proceeding against the acquitted official, subject to the one-year bar rule discussed above. [See Const. art. XI, § 3(5)]

**19. What happens when an official resigns after she is impeached but before she is convicted?**

The practice has been for Senate not to proceed to trial or, if trial has begun, to pre-terminate it. In the case of Ombudsman Merceditas Gutierrez and COMELEC Chairman Andres Bautista, the Senate did not take further action after they resigned following their impeachment by the House of Representatives. In the case of President Joseph Estrada, his impeachment trial was terminated by the Senate after his resignation following EDSA II.

There is a view that trial may proceed even after the termination or resignation of the impeached officer because the consequence of impeachment is not only removal, but also disqualification and fitness to hold future public office.

**20. Is the Senate required to release a written decision?**

No. While Article VIII, Section 14 of the Constitution requires judicial courts to render a decision stating therein the facts and law which it is based on, the same is not required for the Senate sitting as an impeachment court.

Senators vote on each article of impeachment after the presiding officer calls his name, to which the senator shall rise and answer *guilty or not guilty*. It is only when such Senator wishes that she may explain her vote for not more than two (2) minutes. When two-thirds (2/3) of the Senate vote guilty upon any article of impeachment, a judgment of conviction is pronounced, and a certified copy thereof is deposited in the Office of the Secretary of Senate. [Senate Rules, rule XXI]

In practice, senators may write an extended opinion (as in the case of former Senate President Juan Ponce Enrile, during the Corona impeachment (2012)). However, such opinion does not have any legal effect or persuasive weight in future impeachments as the official act is simply the vote of the Senate.

**21. May the impeached official file a motion for reconsideration or appeal?**

Motions for reconsideration of a judgment of conviction are prohibited ("not in order"). [Senate Rules, rule XXI] As the political act of a coordinate branch, the Senate's decision to convict or acquit cannot be appealed to the courts.

**D. Judicial Intervention**

**22. Can the Supreme Court intervene in impeachment cases?**

Yes. The Supreme Court has the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [Const. Art. VIII, § 1] In *Francisco v. House of Representatives*, *supra*, the Court stated that impeachment cases are not truly political questions. The Supreme Court has thus intervened in past impeachment cases when the sparse limits provided by the Constitution were alleged to have been violated.

**23. Which matters can the Supreme Court review?**

The Court's power of judicial review extends over justiciable issues arising in impeachment proceedings, such as compliance with the impeachment procedure in the Constitution (e.g., the one-year bar rule). [*Francisco v. House of Representatives*, *supra*] There is nevertheless a view that whether or not Senate Impeachment Rules were followed is a political question belonging to the Senate. [*Corona v. Senate*, G.R. No. 200242 (2012), citing the Senate's arguments]

**24. Can the Supreme Court reverse an impeachment or a conviction?**

No. While there are reviewable aspects of an impeachment proceeding as discussed above, the decision of the House of Representatives to impeach and the judgment of the Senate to convict or acquit, and the respective reasons therefor, are not reviewable by the Supreme Court.

Article IX of the Constitution provides that the "exclusive power" to initiate impeachment cases belongs to the House of Representatives and the "sole power" to try and decide them lies with the Senate. As these provisions are a "textually demonstrable commitment" by the Constitution to these bodies, and there are no constitutionally imposed limits on this discretion, the decision to impeach and convict or acquit remain truly political questions. [See *Francisco v. House of Representatives*, *supra*]

**E. Novel and Miscellaneous Questions**

- 25. If the Vice-President is convicted and removed, how will her replacement be chosen?**

The President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives. If majority of all the Members of both Houses of Congress, voting separately, confirm the nominee, she shall become the Vice-President. [Const. art. VII, § 9] The congressional seat vacated by the new Vice-President may be filled by a special election. [Const. art. VI, § 9]

- 26. What happens if the impeachment trial is not terminated at the end of the 19th Congress? Can official be impeached and convicted by different Congresses, e.g., the House of Representatives of the 19th Congress and the Senate of the 20th Congress?**

There are two views. One view is that the Senate can continue with trial beyond June 30, 2025 because it is a “continuing body” pursuant to older decisions of the Supreme Court [*see Arnault v. Nazareno*, G.R. No. L-3820 (1950)]; the power of impeachment is not legislative and therefore does not expire with each Congress; and accountability as the underlying spirit of the Constitution requires a final decision by the Senate.

The other view is that the Supreme Court has more recently held the Senate not to be a continuing body. Hence, “due to the termination of the business of the Senate during the expiration of one (1) Congress, all pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time.” [Balag v. Senate, G.R. No. 234608 (2018)]

- 27. May the Senate try an impeachment case even if it has previously adjourned, i.e., in legislative recess?**

There are also two views. One view is that the Senate can only conduct the impeachment trial when it is in session. This would be consistent with the practice during the Estrada impeachment trial (2000-2001) and Corona impeachment trial (2012), where sittings were suspended while the Senate was in recess. If this were the case, the Senate can only conduct the impeachment trial of Vice-President Sara Duterte when it resumes session after June 2, 2025, unless it is called into a special session by the President pursuant to Article VI, Section 15 of the Constitution.

The other view is that the Senate can and should hold trial immediately and even when Congress is not in session. Article IX, Section 3(4) of the Constitution—the mode used by the House of Representatives to impeach Vice-President Duterte—directs that “trial by the Senate shall proceed *forthwith*,” a word that the Constitution uses in other provisions to mean without delay. Further, “sessions” in the Constitution are legislative in character, and in practice, non-legislative or preparatory work continues even when Congress is adjourned. In that light, impeachment is not a legislative function and the power to try impeachment cases can be exercised even when session is suspended.

Notably, the current penultimate adjournment of the 3rd Session of the 19th Congress is longer than those of the 3rd Sessions of the 17th and 18th Congress.

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